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SUPREME COURT OF THE UNITED STATES.

No. 157.

WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, LATHAM A. FISH, AND DONALD MACKAY, APPELLANTS,

vs.

THE ADAMS EXPRESS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JUNE 21, 1873.

Oct. 2, 1873

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 254 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of the United States of America, against Washington R. Vermilye et al., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 18th day of June, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-seventh.

[SEAL.] KENNETH G. WHITE,
Clerk.

2

3 [L. S.] The President of the United States of America to William M. Vermilye, Washington R. Vermilye, Thomas E. Vermilye, and Adams Express Company, greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of October, A. D. 1869, wherever the said court shall then be, to answer a bill of complaint exhibited against you in said court by The United States, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at the city of New York, on the 3d day of September, in the year one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

KENNETH G. WHITE, *Clerk.*

EDWARDS PIERREPONT, *Sol'r.*

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of October, 1869, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

4 Personally served on W. M. Vermilye, Washington A. Vermilye, & treasurer of Adams Express Company; others not found.

FRANCIS C. BARLOW,
U. S. Marshal.

SEPT. 6, '69.

Filed Sept. 6, 1869.

5 *Bill.*

In the circuit court of the United States. In equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

The United States of America bring this bill of complaint against Willian M. Vermilye, Washington R. Vermilye, Thomas E. Vermilye, co-

partners, and doing business under the firm-name and style of Vermilye & Co., in the city of New York aforesaid, and Adams Express Company, a joint-stock company, organized under the laws of the State of New York, consisting of seven or more stockholders, and doing business under the firm-name and style of Adams Express Co. and complaining, show unto your honors that the said Vermilye & Co. claim that they are the owners of five obligations of the United States aforesaid, known as seven-thirty notes, for the principal sums of $1,000 each, to wit: five notes bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered respectively 48837, 48838, 48839, 48840, and 143625, of the series of seven-thirty notes issued June 15, 1865; and of three other certain obligations of the said United States aforesaid, known as seven-thirty notes, for the principal sums of $100 each, to wit: three notes, each bearing seven and $\frac{30}{100}$ per cent. interest per annum, and numbered respectively 172470, 37209, 234571, of the series of seven-thirty notes issued July 15, 1865, which said notes, to wit, five notes aforesaid, for the principal sums of $1,000 each, bearing seven and $\frac{30}{100}$ per cent. interest per annum, of the issue of June 15, 1865, and numbered 48837, 48838,
6 48839, 48840, 143625; and three notes aforesaid, for the principal sums of $100 each, bearing seven and $\frac{30}{100}$ per cent. interest per annum, of the issue of July 15, 1865, and numbered 172470, 37209, 234571, were, by the said Vermilye & Co., sent to your orators for payment or redemption, the said Vermilye & Co. claiming that they purchased said notes in good faith and for a valuable consideration; without notice or suspicion that the seller was not the owner thereof; and your orators further show that the defendants, Adams Express Company, likewise claim to be the owners of all said notes, and that being such owners, heretofore and about the twenty-second day of May, 1868, the said notes were stolen from them, and that they have never parted with the title thereof; and the said Adams Express Company, have notified your orators of the said claim, and not to deliver the said notes or pay the same to the said Vermilye & Co.; and the said Vermilye & Co. have notified your orators of their said claim, and notified them not to deliver the said certificates or pay the same to the said Adams Express Company.

And your orators further show that they have always been willing to deliver the said certificates and to pay the moneys secured by said certificates, with the interest due thereon, to such person or persons as should be lawfully entitled to receive the same, and to whom they could pay the same with safety. And your orators hereby offer to deliver the said certificates nto this court.

And your orators further show that they do not in any respect collude with the said Vermilye & Co., or with Adams Express Company, touching the matter in question in this cause.

That they have not exhibited this bill at the request of said defendants, or either of them, and that they have not been indemnified by said defendants, or by either of them, but merely of their own free will, and to avoid being molested or injured, touching the matters contained in said bill.

7 And, as your orators can only have adequate relief in this court, to the end that the said defendants may interplead and settle their right to the said notes, and to the money secured thereby, and that your orators may be at liberty to deliver the said certificates to this court, and that the said Vermilye & Co. and the said Adams Express Company may be enjoined from commencing any suit against your orator, touching the premises, and that your orators upon payment into court

of such amount, and procuring the said defendants to interplead according to the cause of this court, may be discharged from all liability to such defendants in the premises, and may have all their costs therein.—

May it please your honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this honorable court, and directed to said defendants, commanding them by a certain day, and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide by such orders and decrees as may be made against them. And your orators will pray, &c.

EDWARDS PIERREPONT,
United States Attorney, Solicitor, and of Counsel for Claimants.

Answer of the Adams Express Co.

In the circuit court of the United States for the southern district of New-York. In equity.

The answer of the Adams Express Company, impleaded herein with Vermilye & Co., to the bill of complaint of the United States of America.

8 This defendant now, and at all times hereafter, saving and reserving to itself all and all manner of benefit and advantage of exception whatsoever, which can or may be had or taken to the manifold errors, uncertainties, imperfections, and insufficiencies, in the said plaintiff's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

This defendant admits its organization as alleged in said bill. This defendant denies that the said Vermilye & Co. are the owners of five obligations of the United States, known as 7-30 notes, for the principal sum of one thousand dollars each, bearing $7\frac{30}{100}$ per cent. interest per annum, and numbered respectively 48837, 48838, 48839, 48840, 143625, of the series of 7-30 notes issued June 15, 1865, and of three other certain obligations of the United States known as 7-30 notes, for the principal sum of one hundred dollars each, and bearing $7\frac{30}{100}$ per cent. interest per annum, and numbered respectively 172470, 37209, 234571, of the series of 7-30 notes issued July 15, 1865; and it avers that the said Vermilye & Co. have no right, title, or interest in or to the said notes, or in or to either thereof, or the interest thereon.

This defendant further denies that the said Vermilye & Co. ever purchased the said note, or either thereof, in good faith, and for a valuable consideration, without notice or suspicion that the seller was not the owner thereof.

This defendant admits that it claims, and it avers that it is the owner of, each and all of the said 7-30 notes, and is entitled to the possession thereof and to the amount due from the plaintiff thereon for principal and interest.

This defendant avers that it is a carrier and forwarder of money-packages for hire; and that it was so in the month of May, 1868, between New Albany, in the State of Indiana, and the city of New York.

9 On the nineteenth of May, 1868, the First National Bank at New Albany, Indiana, were the owners and in possession of the above-described 7-30 note, No. 143625, for one thousand dollars; and being so the owner of the same, and being desirous of converting the same,

in accordance with the usage of the Treasury Department of the plaintiff, the said bank did, by its cashier at the place and on the day last aforesaid, endorse said note in the words and figures following: "Pay Secretary of the Treasury for redemption.—W. MANN, Cas.;" or "Pay Secretary of the Treasury for conversion.—W. MANN, Cas." The said Mann was, at that time, cashier of said bank. The said bank caused the said notes, so endorsed, to be placed in an envelope, properly secured, and endorsed the same to the Secretary of the Treasury of the plaintiff, at Washington, D. C.; and thereupon, and on the said nineteenth day of May, the said bank delivered the said package, so containing the said notes, to this defendant, at its office in Albany aforesaid, for transportation by it to the Secretary of the Treasury of the plaintiff, at Washington aforesaid. This defendant received possession of the said package, with its contents, and had the same in its custody, as carrier aforesaid; and while in the act of transporting the same, the same was feloniously and with force and arms taken from the possession of this defendant by certain persons unknown to this defendant. And such taking possession of was not occasioned by the negligence of this defendant, but solely by the felonious acts of the parties last aforesaid. The said note subsequently appeared in circulation, but not bearing, with legible distinctness, either of the endorsements aforesaid, but yet bearing traces of said endorsement sufficiently legible to indicate to any one conversant with such notes that the negotiability of the same had been restricted by an endorsement which it had been attempted to obliterate. The said Vermilye & Co., who then were bankers, dealing in such notes, claimed to have purchased the said notes in good faith and for value, and without notice of such endorsement.

But this defendant avers and charges the fact to be, that both to the agents of this defendant and to the agents employed by the plaintiff in its Treasury at Washington, the fact of such attempted obliteration was and now is plainly perceptible upon said notes, and, as this defendant avers, was the cause of the refusal, in the first instance, of the Secretary of the Treasury of the plaintiff to redeem or convert said note.

This defendant avers that the said note last above mentioned was alleged to have been put in circulation by one A. H. Seldon, who gave the same to one Muyr for negotiation, at a price less than the then ruling market-price. That the said Muyr handed it to one Sheldon, who transferred it to one Herrick, who sold it to the firm of Suydan & Mason, doing business in the city of New York as brokers, and acting as agents of the said Vermilye & Co., and for a price less than the then market-value; and the said Suydan & Mason thereafter delivered the same to the said Vermilye & Co., who presented the same at the Treasury Department of the plaintiff for redemption.

And this defendant further avers that it has fully paid the said First National Bank of New Albany for the said note, and is entitled to the possession thereof, and to be paid the amount due thereon by the plaintiff, with interest. And it prays that it may be decreed by this court to be entitled to receive the said note and the said money so due from the plaintiff, for principal and interest thereon.

This defendant, further answering, says that on the twenty-first day of May, 1868, the First National Bank of Clarksville, Tennessee, was the owner, in its own right or as depository, of all the other Treasury notes mentioned in the bill of complaint herein. That being so the owner thereof, it caused the said notes and each thereof to be endorsed by its cashier or by the owners thereof, to be securely enveloped and

addressed to B. Seaman, cashier, New York, to be delivered to
11 the Southern Express Company at Clarksville, for transportation to the city of New York, for conversion to the bonds of the plaintiff known as five-twenty bonds. This defendant received the said package containing the said notes from the said The Southern Express Company, and placed them in the same safe in which the package received from the First National Bank of Albany was placed. The said package so received from the said First National Bank of Clarksville was feloniously taken from the custody of this detendant at the time and under the same circumstances hereinbefore alleged in regard to the larceny of the package so as aforesaid received from the said First National Bank of New Albany. The endorsement upon the said notes was attempted to be obliterated in the same manner and to the same extent and no more, as is hereinbefore alleged in regard to the said note numbered 143625, and the same were put in circulation by the same parties, and came to the said Vermilye & Co. in the same manner as the said note numbered 143625. This defendant has fully paid the said First National Bank of Clarksville for each and every of the said notes, and is entitled to the possession of the same, and to the amount due thereon from the plaintiff for principal and interest, and it prays that it may be decreed to be such owner, and to be entitled to demand and receive such proceeds.

This defendant, further answering, avers that the said Vermilye & Co., prior to their reception of the said notes, were duly notified by this defendant of the fact of the larceny aforesaid, and were furnished by it with the numbers of the said notes, and of the series thereof, and that they were fully notified thereby, and also by the appearance of the said notes, that the same had lost their negotiable character, and were tainted in the title thereto in the hands of those from whom they were received by the said Vermilye & Co.

And this defendant further avers that at or about the time of
12 the reception of the notes hereinbefore mentioned by the said Vermilye & Co., there were offered to them by the same parties ten other notes which had been contained in the said two packages, and which had been so endorsed; and that the said Vermilye & Co. accepted five of said notes, viz, one for one thousand dollars, and four for four hundred dollars, and rejected the residue of said ten notes, on the ground that the endorsements had been attempted to be extracted therefrom. Subsequently the said Vermilye & Co. purchased from a third party three of the identical bonds so previously rejected by them. And this defendant avers that the said Vermilye & Co., if they parted with value for said bonds, did so in violation of the notices given to them by this defendant, of its property in the said bonds, and without the exercise of ordinary care and scrutiny, and with full knowledge, from the appearance of the said notes, that the same had been tampered with, and an endorsement thereon attempted to be obliterated.

Wherefore this defendant prays that by a decree of this court it may be adjudged to be the owner of all the notes in said complaint mentioned, and to be entitled to the possession thereof, and to receive from tthe plaintiff the amount due from it for principal and interest thereon, together with such other or further or different relief as to this court may seem meet. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; without this that there is any other matter or thing in the said bill of complaint contained, not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the

knowledge or belief of this defendant; and it prays to be hence dismissed with its reasonable costs and charges, in this behalf most wrongfully sustained.

THE ADAMS EXPRESS COMPANY,
By WM. B. DINSMORE, *its President.*

BLATCHFORD, SEWARD, GRISWOLD, AND DA COSTA,
Solicitors, and of Counsel for Defendant.

13 *Answer of Vermilye & Co.*

In the circuit court of the United States for the southern district of New York. In equity.

The joint and several answers of Washington R. Vermilye, James A. Trowbridge, Donald Mackay, and Latham A. Fish, impleaded herein with the Adams Express Company, to the bill of complaint of the United States of America.

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception whatsoever which can or may be had or taken to the manifold errors, uncertainties, imperfections and insufficiencies in the said plaintiffs' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised it is material or necessary to make answer unto, answering,

Say that these defendants on information and belief admit the organization of "The Adams Express Company" as alleged, and also say that these defendants at the several times in the complaint mentioned were partners under the name of Vermilye & Company, bankers and brokers, and as such engaged in the negotiation, purchase and sale of stocks, bonds and moneyed securities.

These defendants, oninformation and belief, admit that the said Adams Express Company claim to be entitled to some interest on the said several notes and securities in this said bill intended to be described, and herein and particularly mentioned, and that they have notified the plaintiffs of said claim, and requested the plaintiffs not to deliver the same to these defendants; but these defendants have no knowledge or information in regard to the nature or grounds of said claim.

14 These defendants also admit that they, Vermilye & Co., claim to be owners of the said several securities, viz, five United States seven-thirty notes for one thousand dollars each, and numbered 48837, 48838, 48839, 48840, and 143625, of the series of June 15th, 1865; and of three other such notes for one hundred dollars each of the issue of July 15th, 1865, and numbered 172470, 234571, and 57209, the said last-mentioned note being in the bill of complaint incorrectly described as number 37219; and to be entitled to receive the amounts thereof from the said plaintiffs, and that they have demanded payment thereof from the said plaintiffs, and have denied and still deny that the said Adams Express Company has any interest or title to the said notes or either of them, or any right to demand or receive the amount thereof.

These defendants further say that the said several notes and securities were purchased and received by these defendants in the ordinary course of business at their banking-house, No. 20 Nassau street, in the city of New York, and at the time of the said purchase they paid therefor the full value of the said several notes in the said city of New York, and that they so purchased and paid for the same in good faith, and without any knowledge or notice that the parties from whom the same

were purchased were not the owners thereof and lawfully entitled to the same, and in the full belief that said persons were such owners and so entitled.

These defendants further say that, having so purchased and received the said notes, and being in possession thereof, these defendants forwarded the same to the Secretary of the Treasury at Washington for redemption and payment by the proper authorities and agents of the plaintiffs, the said several notes having then become due, and they say that the said notes were so forwarded to the plaintiffs through their said officer in the manner aforesaid, and for the purpose of procuring
15 the redemption and payment thereof, and for no other purpose, and that the said notes were entrusted to the said plaintiffs for such purpose and none other, and in pursuance of the notification given by the plaintiffs that the said notes would be redeemed and paid if they should be so sent; and these defendants are advised and insist that, having received the said notes for such purpose and under such circumstances, it was the duty of the plaintiffs to have redeemed and paid the same to these defendants from whom they were received, or to have returned the same to these defendants unpaid and unredeemed.

And they further say that before the commencement of this action they demanded a return of the said notes and securities from the said plaintiff, but the demand was not complied with.

These defendants have no knowledge or information sufficient to form a belief as to the remaining allegations in the said bill, and leave the plaintiffs to make proof thereof as they may be advised.

These defendants claim and insist that they are the owners of the said notes, and entitled to recover and receive the same, or the amount due thereon, with the interest and the interest on the aggregate amount thereof, and ask that the court will so adjudge, and will grant to these defendants such a further and other relief as may be proper.

VERMILYE & CO.,
Per L. A. FISH.

CHARLES D. BURRILL,
Solicitor for Def'ts.
JOHN E. BURRILL,
Of Counsel.

16 *Replication.*

United States circuit court for the southern district of New York.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWbridge, Donald Mackay, and Latham A. Fish. } In equity.

These replicants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by these replicants without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these replicants are, and will be, ready to aver and prove as this honorable court

shall direct; and humbly pray, as in all of the said bill they have already prayed.

EDWARDS PIERREPONT,
United States Attorney, Complainant's Solicitor.

17 *Interlocutory Decree.*

At a circuit court of the United States, in equity, held in and for the southern district of New York, at the city of New York, on the 19th day of July, 1870.

Present, the honorable Samuel Blatchford, justice, presiding.

THE UNITED STATES OF AMERICA
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWbridge, Donald Mackay, Latham A. Fish, and Adams Express Company.

This cause having been this day brought on to be heard upon the bill of interpleader filed therein upon the answers of the defendants and the replication thereto,

On hearing Mr. Stanley, of counsel for complainant, and Mr. C. D. Burrill, of counsel for the defendants Washington R. Vermilye, James A. Trowbridge, Donald Mackay, and Latham A. Fish, and Mr C. A. Seward, of counsel for the defendant Adams Express Company,

18 it is ordered, adjudged, and decreed that the said bill of interpleader is properly filed, and that the defendants do interplead and settle the matters in controversy in this suit between themselves, and that in the mean time, and until the further order of this court, the notes in controversy be deposited with the clerk of this court.

And it is further ordered, adjudged, and decreed that the costs of the United States in this suit up to this time, to be taxed, be paid by the party in whose favor judgment final shall be entered herein.

And this court doth reserve the consideration of all questions of costs as between the said defendants, and all other questions and directions, until the trial by the court of the matters in controversy between the defendants hereto.

SAMUEL BLATCHFORD.

A copy:

KENNETH G. WHITE, *Clerk.*

19 *Stipulation as to commissions.*

Circuit court U. S., southern district, New York.

THE UNITED STATES
vs.
THE ADAMS EXPRESS COMPANY, IMPLEADED with Vermilye & Co.

It is hereby stipulated that the testimony of the following witnesses, Walter Mann, Jesse J. Brown, Henry H. Combs, Clarence W. Combs, Charles N. Williams, John Lyons, William R. Shelby, Alanson M. Reuter, Thomas G. Harkins, S. F. Beaumont, W. P. Hume, James W. Hume, R. M. Prouty, A. F. Talbott, A. P. Meriweather, S. A. Jones, L. H. Hoffman, and A. Wheden, heretofore taken under three several commissions, issued out of the New York court of common pleas, in a suit

wherein William B. Dinsmore, president of the Adams Express Company, is plaintiff, and William B. Duncan and others are defendants, the subject of controversy in said suit being Government bonds, similar in character to those in controversy in this suit, and some of which it is alleged came into and were taken from the possession of the
20 Adams Express Company in the same manner and at the same time as it is alleged the bonds in controversy herein came into and were taken from the possession of the said The Adams Express Company, may be used and read in evidence in this cause, on the part of either of the parties to the above action, with like force and effect, as though taken under a commission issued out of this court herein, subject to all legal objections and exceptions thereto, to be taken at the trial of this cause.

Dated New York, May 9th, 1870.

BLATCHFORD, SEWARD & GRISWOLD,
Sol's for Adams Express Co.
CHARLES D. BURRILL,
Sol. for Vermilye & Co.

21 *New Albany commission.*

Form 15. Domestic bill of lading, Adams Express Company. Great eastern, western and southern express forwarders.

$13,000.] NEW ALBANY, *May 19th*, 1868.

Received from First Nat. Bank, one p'k'ge, sealed, and said to contain thirteen thousand dollars.

Addressed, "Sec. of the Treas'y, Washington, D. C."

Upon the special acceptance and agreement that this company is to forward the same to its agency nearest or most convenient to destination only, and there to deliver the same to other parties to complete the transportation—such delivery to terminate all liability of this company for such package; and also, that this company are not to be liable in any manner, or to any extent, for any loss, damage, or detention of such package, or of its contents, or of any portion thereof, occasioned by the act of God, or by any person or persons, acting or claiming to act in any military or other capacity in hostility to the Government of the
22 United States, or occasioned by civil or military authority, or by the acts of any armed or other mob, or riotous assemblage, piracy, or the dangers incident to a time of war, nor when occasioned by the dangers of railroad transportation, or ocean or river navigation, or by fire or steam, unless specially insured by this company, and so specified in this receipt. In no event is this company to be liable for a greater sum than that above mentioned, nor shall it be liable for any such loss unless the claim therefor shall be made in writing, at this office, within thirty days from this date in a statement to which this receipt shall be annexed; and the shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to, and enure to the benefit of, each and every company or person to whom the Adams Express Company may entrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person.

Freight $16.25 Pa.

For the company.

REAMER & CO.
W.

23 Common pleas.

DINSMORE, PRESIDENT,
vs.
DUNCAN ET AL.

Interrogatories to be administered by J. H. Stotsenberg, commissioner, to the witness hereinafter named to be produced, sworn, and examined, on behalf of the plaintiff.

To Walter Mann, J. Brown, Henry H. Combs, and Clarence W. Combs.

First. What is your name, age, residence, and occupation?

Second. Had you any, and, if so, what, official connection with the First National Bank at New Albany, Indiana, in the month of May, 1868? If yea, state what such connection was.

Third. Did such bank, on or about the 19th of May, 1868, do up and undertake to forward to the Secretary of the Treasury a sealed package said to contain $13,000? If yea, then state—

24 1. By whom such package was made up.

2. What were its contents.

3. Were such contents endorsed; and, if so, by whom, and when and where? And state the language of such endorsement as particularly as you can.

4. State the numbers, value, denominations and letters of the contents of such package.

5. Was any record kept of the contents of such package? If yea, produce and annex a copy of the same to your deposition.

Fourth. By whom was such package made up, by whom was it addressed? And if it were addressed, then state by whom, and to whom.

Fifth. Was such package delivered to any one—and if so, to whom—for transportation; and when and where was any receipt given therefor, and to whom? If so, look at the receipt hereto annexed, and state whether it was the receipt which was so given.

Sixth. State by whom each receipt was signed, and what the letter at the end of the signature means.

Seventh. Did the bank ever receive from the person to whom the said package was addressed any acknowledgment of its receipt by such person?

Eighth. Do you know any other matter or thing which may tend to the benefit or advantage of the plaintiff in this suit? If yea, declare the same as fully and at large as if you had been particularly interrogated thereto.

To Charles N. Williams, John Lyons, W. R. Shelby, A. M. Reuter, and Thomas G. Harkins.

First. What is your name, age, residence, and occupation?

Second. Were you in the employ of the Adams Express
25 Company in the month of May, 1868? If yea, in what capacity, and what were your official duties?

Third. Do you recollect anything concerning a sealed package, said to contain $13,000, forwarded by the First National Bank of New Albany to the Secretary of the Treasury at Washington, D. C.? If yea, state if you made any entries in any books or papers in reference to such package; and if yea, produce and annex such entries to your deposition.

Fourth. State all that you did with reference to said package, and particularly from whom you received the same, and when you received the same, and to whom you delivered the same, and whether the same was sealed at the time of the reception and delivery thereof; and if you state that the same was put into any safe, state whether the said safe was locked and who kept the key thereof, and what became of such safe and of such package.

Fifth. Do you know any other matter or thing which may tend to the benefit or advantage to the plaintiff in this suit? If yea, declare the same as fully and at large as if you had been particularly interrogated thereto.

BLATCHFORD, SEWARD & GRISWOLD,
Plaintiff's Attorneys, 29 Nassau Street, New York.

26 Court of common pleas for the city and county of New York.

Cross-interrogatories to be administered to Walter Mann, J. Brown, Henry H. Combs, and Clarence W. Combs, witnesses to be produced, sworn and examined on the part of the plaintiff in a certain action pending and at issue in the court of common pleas for the city and county of New York, between William B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, under and by virtue of the annexed commission.

First cross-interrogatory. State particularly and in detail your means of knowledge as to each and every matter testified to by you in answer to the third direct interrogatory. Did you participate to any, and if any what, extent in the work of making up the said package or endorsing the same, or making a record of its contents?

Second. Did you personally deliver the said package to any one for transportation? When, where, and in whose possession was the said package when you last saw the same, and was the said package then sealed up or how otherwise?

BOWDOIN, LAROCQUE, AND BARLOW,
Attorneys for Defendants.

Cross-interrogatory to be administered to Charles N. Williams, John Lyons, W. R. Shelby, A. M. Reuter, and Thomas G. Harkins, witnesses to be produced, sworn, and examined on the part of the plaintiff in a certain action pending and at issue in the court of common pleas for the city and county of New York, between William B. Dinsmore,
27 president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, under and by virtue of the annexed commission.

First cross-interrogatory. When, where, and in whose possession did you last see the package mentioned in the direct interrogatories? How do you know what became of such package?

BOWDOIN, LAROCQUE AND BARLOW,
Attorneys for Defendants, 35 William St.

No. 1068.] THE ADAMS EXPRESS COMPANY, HARKINS, MESS.

9:30 P. m.] *From Louisville, Ky., to Washington, D. C., May 22nd, 1868.*

Packages.	Description.	Value.	Consignor.	Consignee.	Charges.—C.	Freight P.	Destination.	Fr't collected.	Prepaid.	Remarks.
1 pa.	H.	$1,500 00	N. Albany.	21 Treas. U. S.	.....	.....	.....	.....	.....	Gov. funds outside pouch.
1 "	H.	13,000 00	"	Sec'y of Treas'y.	.....	.....	.....	.....	.....	Paid $16.25.
1 "C. O. D.	Harkins	15 00	E. S. W.	G. B. Stillson. "Copy."	.....	.....	.....	.....	.....	
					.....	.....	.....	.....	.....	

Subscribed by me,

ALANSON M. RUTER.

Subscribed by me, April 20th, 1869,

THOMAS G. HARKINS.

29 Received in good order of the Adams Express Company, by the hands of trip No. 47, May 20, 1868, Lyons, messenger, the following articles to which our names are attached.

Date of way-bill.	No. of way-bill.	Where from.	Packages.	Amount.	Marks.	Destination.	Charges.	Freight.	Pre-paid.	Signature acknowledging receipt of p'k's.
May 20	41	O. 'Boro	1 unp'd, C. O. D	$33 75	Great Am. Tea Co	New York	"	25	"	S.
			1 pa	75 00	Lane & B	Louisville	"	"	25	S.
			1 p'd, C. O. D.	13 75	N. Nicholas	"	"	35	"	S.
			1 " "	3 25	Geo. Walker	"	"	25	"	S.
			1 pa	72 00	Jas. McClure	B. Green, K'y	"	"	50	S.
			1 p'd, C. O. D.	9 25	D. Marshall	Louisville	25	25	"	S.
" "			1 pa., V. papers		A. J. Ballard	"	"	"	25	S.
"	34	R. Port	1 pa	300 00	J. S. Burdsal & Co	Cincinnati	"	"	75	S.
			1 "	100 08	Mayer Bros	Louisville	"	35	"	S.
" 21	24	T. C	1 "	72 70	E. Kistner	Cincinnati	"	35	"	S.
			1 "	40 00	M. M. Rohrer	Louisville	"	"	35	S.
			1 p'd, d'ft	56 00	C. F. Adal	Cincinnati	"	"	50	S.
			1 d'ft, gold	190 00	Beuziger Bros	New York	"	fc	"	S.
			1 pa. & G. B. gold	95 00	Dickson, C. & Co	Cincinnati	"	50	"	S.
			1 " " "	115 00	M. Straus	"	"	50	"	S.
			1 pa	W. B.	J. H. Rhodes	"	"	"	"	S.
" "	27	Can	1 p'd, C. O. D	45 44	R. A. Robinson & Co	Louisville	"	25	"	S.
" "	28	H. Ville	1 pa	200 00	Titus & Sterrett	Cincinnati	"	"	60	S.
			1 "	250 00	C. H. Finck	Louisville	"	40	"	S.
" "	Local	L. & E. Com	1 d'ft	1, 129 25	Braunin, S. & Co	"	"	fc	"	S.
30			1 pa	10 00	J. A. Wallace	Hopkinsville	"	"	50	Shelby.
" "	30	C. Port	1 pa	425 00	A. J. Gross	Louisville	"	"	40	S.
			1 "	207 69	Johanbock & Bro	"	"	40	"	S.
			1 "	200 00	Small, L. & Co	"	"	40	"	S.
			1 "	19 40	Vacaro & Bro	"	"	25	"	S.
			1 "	2, 126 65	J. A. Wallace	Hopkinsville	"	1 25	"	S.
			1 unp'd bill	31 05	Griffith & E	Louisville	"	25	"	S.
" "	14	S. Port	1 pa	25 00	H. A. Cecil	E. Town, K'y	"	25	"	S.
			1 "	15 00	C. B. Hawkins	" "	"	35	"	S.
			1 "	16 85	J. T. S. Brown	Louisville	"	25	"	S.
" "	11	Alton	1 "	12 00	Griffith, B. & Co	"	"	"	25	S.
" "	22	L'worth	1 cert	146 91	P. M. U. S. A	Indianapolis	"	fc	"	S.
			1 p'd, C. O. D	19 25	Am. Ex. Co	Louisville	"	35	"	S.
			1 " "	5 50	Fletcher & B	"	"	35	"	S.
" "	17	B. Burg	1 pa	100 82	Heron, R. & P	Cincinnati	"	"	50	S.
			1 "	119 10	B. Meyberg	"	"	"	75	S.
			1 "	166 15	Neale & Co	Louisville	"	40	"	S.
" "	19	"	1 "	40 50	H. H. Dent	"	"	"	35	S.
			1 "	50 00	Miss. S. Warfel	Union City, Tenn	"	"	75	S.
" "			1 "	93 40	Col. M. H. Cofer	E. Town, K'y	"	35	"	S.
" "	29	N. Alb	1 pa	13, 000 60	Sec. of Treas	Wash., D. C	"	"	16 25	S.
" "			1 "	1, 500 00	Treas. U. S	" "	"	50	25	S.

Subscribed by me, April 20, 1869.

JOHN LYONS.

31 *From New Albany to Evansville, May 19th, 1868.*

25								
1 bale	L			D. Davidson		35	Huinesville	
1 box	L			W'm Riley		50	Evansville	
1 P. box	L			Mrs. H. H. Bentter		35	Rockhaven	
1 bale	L	102 50		Cramer & Henky		1 00	Evansville	
1 C. O D	L			J. F. Glover			"	35
1 B. box	L			J. T. Connor & Co	2 95	25	Rome	
1 pa.	L							
1 bale	L	42 70	D. Crane	W'm K. Merritt		50	Bradenburg	
1 C. O. D	L							

JOHN LYONS.

27								
1 pa	L			H. Kroger		35	Grand View	
1 "	L			Burksdale & Gudgeon.		35	"	
1 "	L			L. Fisher		35	Rockport	

JNO. LYONS.

26							
1 dft. for col		40 80	L. B. & Co.	Jno. S. Mankin		Cannelton	T.C.

LYONS.

Subscribed by me, April 20, 1869.

CHARLES N. WILLIAMS.

32 *New Albany to Evansville, May 20th, 1868.*

28								
1 pa			B. S. & Co.	E. B. Pennington	C	35	Rockport	
1 pa			W. A. C.	A. L. Simons & Co.	C	35	Cloverport	
1 unp'd bill		$12 40	M. A.	Mark Henning	C	25	Evansville	
1 box		10 90	C. & McC.	J. H. Thornbery	C			
1 C. O. D.				J. H. Thornbery	C. $2 05	60	Leavenworth	
1 box		4 55		D. S. Miller	C	50	do.	
1 C. O. D.				do.				

C. M. COLEMAN.

To Louisville, May 21st.

29								
1 pa.	L	$13,000 00	1st Nat. B'k	Secretary of Treas			Washington	16 25
1 do.	L	1,500 00	do.	Treasurer U. S.		50	do.	
1 p'd, F. C.	L	7 70		Smith, Page & Co.		25	Baltimore	
1 do.	L	16 00		do.		25	do.	
1 do.	L	9 25		do.		25	do.	
Cash Exp.	L			S. A. Jones	4 90		Louisville	
30								
1 pa. reports	L		R. & Co.	J. H. Rhodes			Cincinnati	

JOHN LYONS.

(Copy.)

Date of purchase, 1868.	No.	Series.	Issued under act of—	Denomination.	Kind.		Of whom bought.	To whom sold.	Date of sale.
May 19	143,625	2nd	Mar. 3, 1865.	1,000	7 3-10		A. A. Gates.	Sec. Treasury for Conv.	May 19.
"	143,626	"	" "	1,000	"		"	" "	"
"	143,627	"	" "	1,000	"		"	" "	"
"	143,628	"	" "	1,000	"		"	" "	"
"	144,629	"	" "	1,000	"		"	" "	"
"	143,630	"	" "	1,000	"		"	" "	"
"	4,446	3rd	" "	1,000	"		"	" "	"
"	4,450	"	" "	1,000	"		"	" "	"
"	4,451	"	" "	1,000	"		"	" "	"
"	4,452	"	" "	1,000	"		"	" "	"
"	4,447	"	" "	1,000	"		"	" "	"
"	4,448	"	" "	1,000	"		"	" "	"
"	4,449	"	" "		"		"	" "	"

Subscribed by me, April 20, 1869.

Subscribed by me, April 20, 1869.

WALTER MANN.

HENRY H. COMBS.

(Copy.)

Subscribed by me, April 20, 1869.

Subscribed by me, April 20, 1869.

WALTER MANN.

HENRY H. COMBS.

34 Depositions of witnesses produced, sworn, and examined the twentieth day of April, in the year one thousand eight hundred and sixty-nine, at the city of New Albany, county of Floyd, and State of Indiana, under and by virtue of a commission issued out of the court of common pleas for the city and county of New York, in a certain cause therein depending and at issue between William B. Dinsmore, president of the Adams Express Company, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, as follows:

WALTER MANN, of the city of New Albany, county of Floyd, and State of Indiana, by occupation the cashier of the First National Bank of New Albany, Indiana, aged forty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is Walter Mann; I am forty one years of age; I reside in New Albany, Floyd County, Indiana. I am the cashier of the First National Bank at New Albany, Indiana."

Second. To the second interrogatory he saith: "I had an official connection with said bank in the month of May, A. D. 1868. I was during all of said month the cashier of the said bank."

Third. To the third interrogatory he saith: "Yes, sir. I made up the whole package, except the sealing of it. Its contents were thirteen United States seven and three-tenths notes of the denomination of one thousand dollars each. The contents thereof were endorsed by me on the 19th day of May, A. D. 1868, at my desk, that is to say, the cashier's desk in said First National Bank building, at the northeast corner of Upper High and Bank streets, in the city of New Albany, Indiana, across the back of each
35 note. The language of each endorsement, as particularly as I can state it, was either this, 'Pay Secretary of Treasury for redemption, W. Mann, cas.,' or this, 'Pay Secretary of Treasury for conversion, W. Mann, cas.' The numbers of said notes were as follows: One hundred and forty-three thousand six hundred and twenty-five, (143625,) one hundred and forty-three thousand six hundred and twenty-six, (143626,) one hundred and forty-three thousand six hundred and twenty-seven, (143627,) one hundred and forty-three thousand six hundred and twenty-eight, (143628,) one hundred and forty-three thousand six hundred and twenty-nine, (143629,) and one hundred and forty-three thousand six hundred and thirty, (143630,) all of which were dated June 15th, 1865. Also the following: Four thousand four hundred and forty-six, (4446,) four thousand four hundred and fifty, (4450,) four thousand four hundred and fifty-one, (4451,) four thousand four hundred and fifty-two, (4452,) four thousand four hundred and forty-seven, (4447,) four thousand four hundred and forty-eight, (4448,) and four thousand four hundred and forty-nine, (4449,) the seven last named being dated July 15th, 1865. They were of the denomination of one thousand dollars each, and were worth each at that time about eleven hundred and thirty-five dollars in legal-tender notes. I do not know the letters of said notes. There was a record of the contents of the said package kept, and I herewith produce and annex a copy of the same to this my deposition."

Fourth. To the fourth interrogatory he saith: "It was made up by me, except the sealing thereof. It was addressed by me, and it was addressed by me to 'Secretary of the Treasury, Washington, D. C.'"

Fifth. To the fifth interrogatory he saith: "I did not deliver it to any one for transportation; I do not know, of my own knowledge, whether any receipt was given therefor or not. All I know is I gave the package to be sealed to Henry H. Combs, a clerk of said bank."

36 Sixth. To the sixth interrogatory he saith: "He knoweth not."

Seventh. To the seventh interrogatory he saith: "No, sir; the bank never did."

Eighth. To the eighth interrogatory he saith: "I know of nothing further."

First. To the first cross-interrogatory he saith: "Because I did all related there myself, except the sealing of the package, and know the facts therein stated of my own knowledge, and I made the record myself; I endorsed the notes myself; I put the notes in the envelope myself, and I directed the envelope myself."

Second. To the second cross-interrogatory he saith: "I did not personally; when I last saw the said package it was on the table of said bank, under the general charge of Clarence W. Combs, the messenger of said bank. This was on the afternoon of the 19th day of May, 1868, between 3 o'clock and 4 o'clock p. m. of said day. This table was in the inner part of said bank, only accessible to employees of said bank, and when I last saw the said package it was sealed up."

And further saith not.

WALTER MANN.

And JESSE J. BROWN, of the city of New Albany, county of Floyd, and State of Indiana, by occupation the president of the First National Bank of New Albany, Indiana, aged forty-five years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "Jesse J. Brown; am forty-five years of age; I reside in New Albany, Indiana; I am president of the First National Bank, at New Albany, Indiana."

37 Second. To the second interrogatory he saith: "I had; I was president of said bank during all of said month of May, 1868."

Third. To the third interrogatory he saith: "He knoweth not."

Fourth. To the fourth interrogatory he saith: "He knoweth not."

Fifth. To the fifth interrogatory he saith: "He knoweth not."

Sixth. To the sixth interrogatory he saith: "He knoweth not."

Seventh. To the seventh interrogatory he saith: "Not to my knowledge."

Eighth. To the eighth interrogatory he saith: "He knoweth not."

To the first cross-interrogatory he saith: "He knoweth not."

To the second cross-interrogatory he saith: "I did not; I never saw the said package to my knowledge."

And further saith not.

JESSE J. BROWN.

And HENRY H. COMBS, of New Albany, in the State of Indiana, by occupation the teller of the First National Bank at New Albany, Indiana, aged twenty-two years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "Henry H. Combs; I reside at New Albany, Indiana, and am teller of the First National Bank of New Albany, Indiana."

38 Second. To the second interrogatory he saith: "I had; I was book-keeper of the said bank during the month of May, 1868."

Third. To the third interrogatory he saith: "Yes, sir; it did; it was made up by Walter Mann, the cashier thereof, except the sealing. It contained thirteen United States seven-thirty notes of the denomination of one thousand dollars each. The contents were endorsed by said Walter Mann, cashier, on May 19th, 1868, at his desk in the said bank building, on the back of each of said notes. I saw the language of said endorsement on said notes; I think the language thereof was, 'Pay Secretary of Treasury for conversion. W. Mann, cashier.' It was either that, or else, 'Pay Secretary of Treasury for redemption. W. Mann, cashier.' I cannot state the numbers and letters of the contents. The values of the notes were eleven hundred and thirty-five dollars each, in legal-tender notes, and they were of the denomination of one thousand dollars each; there was a record kept of the contents of said package; I saw it while being made by the cashier, Walter Mann; I identify the copy thereof produced by said Mann and testified to by him as a true copy of said record, and make it a part of this my deposition."

Fourth. To the fourth interrogatory he saith: "It was made up by Walter Mann, the cashier of said bank, except the sealing thereof, which I did myself, carefully sealing it up. It was addressed by said cashier, Walter Mann, to 'Secretary of Treasury, Washington, D. C.'"

Fifth. To the fifth interrogatory he saith: "It was; it was delivered to Charles N. Williams, the clerk of Reamer & Co., agents of the Adams Express Company for transportation, by Clarence W. Combs, in my presence on the afternoon of May 19th, 1868, at the office of said Reamer & Co., at the wharf-boat at New Albany, Indiana. A receipt was
39 given therefor, to said Clarence W. Combs, in the name of said First National Bank; I now look at the receipt hereto annexed, and I state that that is the identical receipt which was so given."

Sixth. To the sixth interrogatory he saith: "The said receipt was signed by the said Charles N. Williams; the letter at the end of the signatures means 'Williams,' and is the initial letter of his last name."

Seventh. To the seventh interrogatory he saith: "No, sir; never to my knowledge."

Eighth. To the eighth interrogatory he saith: "He knoweth not."

First. To the first cross-interrogatory he saith: "I was in the banking-house behind the counter, on May 19th, 1868, when Walter Mann, her cashier, was engaged in doing up and undertaking to forward the notes I have described; I saw him make up the package; I saw the notes, all of them, put into the envelope; I saw the endorsements on each of them, made in his handwriting; I saw their denominations; I counted the said notes; I saw the address upon the envelope in his handwriting; after it was addressed said Mann laid it on the inside desk, and I sealed up the said package in the manner that express packages are sealed up, with five seals; I did not endorse the contents, nor did I make the record of its contents, though I saw it made by said Mann."

Second. To the second cross-interrogatory he saith: "No, sir, but I saw it done; when I last saw the said package it was in the possession of Charles N. Williams, the clerk of Reamer & Co., on May 19th, 1868, I think near 5 o'clock p. m. of said day, at the office of said Reamer & Co., on the New Albany wharf-boat; the said package was then sealed up, just as I had sealed it."

And further saith not.

HENRY H. COMBS.

40 And Clarence W. Combs, of the city of New Albany, and State of Indiana, by occupation the clerk of the First National Bank of New Albany, Indiana, aged nineteen years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he said: "Clarence W. Combs; age nineteen; residence, New Albany, Indiana; am clerk of the First National Bank, at New Albany, Indiana."

Second. To the second interrogatory he said: "I had; I was the messenger of said bank during all of the month of May, 1868."

Third. To the third interrogatory he said: "Yes, sir; I don't know of my own knowledge by whom it was made up; I saw the contents of said package before it was sealed up, and it contained thirteen United States seven-thirty notes for one thousand dollars each; I do not know whether they were endorsed or not; I don't know the numbers of said notes, nor their exact value then, nor their letters; their denominations were one thousand dollars each; I do not know, of my own knowledge, of any record of the contents of said package."

Fourth. To the fourth interrogatory he saith: "I don't know by whom it was made up; it was addressed by Walter Mann, cashier of said bank; I don't remember the address—that is, to whom."

Fifth. To the fifth interrogatory he saith: "It was to Charles N. Williams, the clerk of Reamer & Co., Adams Express agents for transportation, on May 19, 1868, about five o'clock in the afternoon, at the office of said Reamer & Co., at the New Albany wharf-boat, and a receipt was given therefor; I now look at the receipt hereto annexed, and identify it as the receipt then and there given."

41 Sixth. To the sixth interrogatory he saith: "It was signed by Charles N. Williams, the clerk of said Reamer & Co.; the letter 'W' means Williams; that was the way he usually signed express receipts."

Seventh. To the seventh interrogatory he saith: "Never, to my knowledge."

Eighth. To the eighth interrogatory he saith: "My brother, Henry H. Combs, went with me from the bank to the wharf-boat, and I delivered the said package to said Williams in his presence."

First. To the first cross-interrogatory he saith: "I was in the bank, behind the counter, and saw the notes before they were put in, and noticed their denominations; I did not participate in the work of making up or endorsing said package, or in making a record of its contents."

Second. To the second cross-interrogatory he saith: "I did, on May 19, 1868, about five o'clock, p. m., at the office of Reamer & Co., wharf-boat, at New Albany, Indiana, and to their clerk, Charles N. Williams, and I then and there last saw the said package in the possession of said Williams; it was then sealed up."

And further saith not.

CLARENCE W. COMBS.

And CHARLES N. WILLIAMS, of the city of New Albany, county of Floyd, and State of Indiana, resident, aged twenty-two years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is
42 Charles N. Williams; I am aged a little over twenty-two years;

I reside in New Albany, Floyd County, Indiana; I am a steamboat-clerk."

Second. To the second interrogatory he saith: "During the month of May, 1868, I was the clerk of Reamer & Co., who were, during that month, the agents of the Adams Express Company, and in their employ."

Third. To the third interrogatory he saith: "I recollect such a package; I did make an entry in reference to such package on a paper in reference to it; I herewith produce the said paper and annex it to this, my deposition, as the paper on which I made the entry."

Fourth. To the fourth interrogatory he saith: "In order to answer what I did with it, I will state the circumstances in their order. I received the said package on the evening of the 19th of May, 1868, from Clarence W. Combs, who was an employee of some kind at that time of the First National Bank, at New Albany, Indiana; it was somewhere near about five o'clock in the afternoon when he delivered it to me; his brother, Henry H. Combs, also an employee of the said bank, was with him at the time. The said package was sealed at the time I received it from him; I put it in my safe after I got it from him, and kept it there until the Louisville and Henderson mail-boat came up to our landing, and I then took it out of the safe and delivered it to John Lyons, who was a messenger of the said Adams Express Company; the said package was sealed and in good order when I delivered it to the said Lyons; the safe was locked in which I put the said package, and I locked it myself, and I kept the key of it myself all the time and no one else had it. The safe remained all the time in the office of said Reamer & Co., on the wharf-boat at New Albany, Indiana, until I delivered said package, and is there to this day; and after I delivered the said package to Lyons, I don't know what became of it."

43 Fifth. To the fifth interrogatory he saith: "I put the said package in the safe after I got it from Combs, in a separate apartment by itself, and no one had access to it nor did I touch it from the time I put it in the safe until I delivered it to said Lyons. I delivered said package to said Lyons very early on the morning of the 22d day of May, 1868. I identify the receipt attached to the interrogatories as the receipt which I gave to said Combs for the said package; the words "Reamer & Co., W." were signed by me. I usually signed for them in that way, using only the first letter of my last name."

First. To the first cross-interrogatory he saith: "I saw it early in the morning of the 22d of May, 1868, at the wharf-boat at New Albany, Indiana, last in the possession of John Lyons, who was the messenger of the Adams Express Company on the steamer Tarascon. I know that I delivered it to him personally, myself, and that is all I know as to what became of the said package, for I never saw it after he got it into his possession."

And further saith not.

CHAS. N. WILLIAMS.

And THOMAS G. HARKINS, of Lexington, county of Fayette, and State of Kentucky, by occupation a United States store-keeper in the seventh district of Kentucky, aged thirty-seven years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

First. To the first interrogatory he saith: "Thomas G. Harkins; am aged 37 last May; reside in Lexington, Fayette County, Kentucky; am a United States store-keeper in the seventh Kentucky district."

44 Second. To the second interrogatory he saith: "I was. I was

a messenger of the said company; my official duties were to receive freight, money, and valuable packages, and to receipt for the same. I would receive them from the clerks at the office of the Adams Express Company at Louisville, Ky., and carry them to Seymour, Indiana."

Third. To the third interrogatory he saith: "I do. Yes, sir; I did. I herewith produce the entry I made with reference to said package, and I annex the said entry to my answer."

Fourth. To the fourth interrogatory he saith: "I received the said package from A. M. Ruter, the money-bill clerk at the Adams Express office, in Louisville, Kentucky; I received said package on the night of the 22d of May, A. D., 1868; as to whom the same was delivered I cannot say, for when I got it from Ruter I placed it in a pouch with other express packages, the said package being sealed and in good order when I received it from Ruter. I sealed the pouch and placed it in an iron safe, the said safe being numbered "102;" the said safe was locked by the said Ruter, and also sealed by him in my presence; the key of said safe was put in the vault of the said Adams Express office, at Louisville, Kentucky, by said Ruter; I started from Louisville with said safe, and accompanied it to the train from Jeffersonville, Indiana, bound for Indianapolis, and placed it in the Adams Express car, accompanying it myself on said train, which left Jeffersonville, Indiana, at half past nine o'clock p. m., of May 22d, 1868; said express car, so occupied by me and said safe, was to go to Seymour, Indiana, a point on said Jeffersonville Railroad; when the train reached Marshfield, Scott County, Indiana, a point on said railraad, the time being about twelve o'clock, midnight, said train stopped for water to supply the engine. I was sitting on the safe meanwhile, and all at once there was a sudden jerk of the train back, and then reversed forward. I jumped up, and just as I jumped up, pistol-firing commenced, and the glass of the express-car windows and doors were broken, and the door of said car was forced open, and a band of robbers forcibly entered the car by violently breaking open the door thereof, which was locked, and some one of them struck me; and that is the last I recollect of the incidents of that night. I delivered it, the said package, to no one, and I was so stunned and wounded by the blows I received, that I do not know what became of said safe or of said package, of my own knowledge; at the time I was so knocked down, the said package, sealed up, was in said safe, which was also locked and sealed at said time."

Fifth. To the fifth interrogatory he saith: "I know that whatever happened in said express car, as above related, was done without my consent or previous knowledge, and that I resisted the entry of said robbers to the best of my ability, though what they did was done so quickly there was no time for much thought."

First. To the first cross-interrogatory he saith: "I saw said package on the night of the 22d of May, A. D. 1868, about seven o'clock in the evening of said day, at the office of the Adams Express Company, in Louisville, and State of Kentucky, in my own possession, when I put it in the pouch, and placed the pouch in the iron safe, as I have heretofore related; the only way I know what became of it is as I have before stated; I was prevented from guarding or delivering it by being knocked senseless by robbers."

And further saith not.

THOMAS G. HARKINS.

And JOHN LYONS, of the city of Louisville, county of Jefferson, and State of Kentucky, by occupation a clerk of the Adams Express Com-

pany, aged twenty-two years and upwards, being duly and pub-
46 licly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is John Lyons; I am a little over twenty-two years of age; I reside in Louisville, Kentucky, and am an employee of the Adams Express Company."

Second. To the second interrogatory he saith: "I was, as messenger, running on the steamer Tarascon, from Louisville, Kentucky, to Henderson, Kentucky, and return; my official duties were to receive and deliver packages along the route I have named."

Third. To the third interrogatory he saith: "Yes, sir; I do; yes, sir; I did, and I herewith produce and annex the said entry to this my deposition."

Fourth. To the fourth interrogatory he saith: "I received the said package from Charles N. Williams, the clerk for Reamer & Co., agents of the Adams Express Company, at the New Albany wharf boat. I received it, I think, early in the morning of May 22d, 1868. I took said package from said Williams, and put it in the safe of the Adams Express Company in a state-room of the Tarascon, and it was not taken out of the safe again until I delivered it to William R. Shelby, the money-check clerk of the Adams Express Company, at Louisville, Kentucky. The said package was sealed when I received it, and it was also sealed when I delivered it to said Shelby. The safe that I put said package into was locked, and I kept the key of it myself. I brought the safe with me to Louisville, Kentucky, and sat on it from the landing to the time of its arrival at the office of said Adams Express Company at Louisville, and there opened the safe and handed the package to Shelby, and took his receipt for it; and the safe remained in the office until I made another trip on the boat. I don't know what became of the package after Shelby got it."

47 Fifth. To the fifth interrogatory he saith: "He knoweth not."

First. To the first cross-interrogatory he saith. "On the morning of May 22d, 1868, at the office of the Adams Express Company in Louisville, Kentucky, in the possession of William R. Shelby, the money-check clerk of said company; I do not know what become of said package after I delivered it to him."

And further says not.

JOHN LYONS.

And ALANSON M. RUTER, of Louisville, and State of Kentucky, by occupation money way-bill clerk of the Adams Express Company at Louisville, Kentucky, aged thirty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "Alanson M. Ruter; am thirty-one years of age; reside in Louisville, Kentucky. I am the money way-bill clerk of the Adams Express Company, at Louisville, Kentucky."

Second. To the second interrogatory he saith: "I was; as money way-bill clerk, my duties were to way-bill all money and valuable packages."

Third. To the third interrogatory he saith: "I remember such a package; yes, sir, I did; I way-billed said package on the Louisville to Washington, D. C., way-bill No. 1,068, but I cannot produce the original way-bill, because it was destroyed by the robbers who captured the Adams Ex-

press car, on the night of May 22d, 1868, at Marshfield, Indiana;
48 but I produce and annex to this my deposition an exact copy thereof, being the same produced by the witness Thomas G. Harkins."

Fourth. To the fourth interrogatory he saith: "I received the said package from William R. Shelby, the money-check clerk of the Adams Express Company, on May 22d, 1868; I then way-billed it as before stated, and delivered it then to Thomas G. Harkins, who was then the messenger of said company. Said package was sealed and in good order when delivered by said Shelby to me, and it was sealed and in good order when I delivered it to said Harkins. When Harkins got said package he put it in a pouch and sealed it; put that pouch in an iron safe, and I locked and sealed that safe, and I put the key of the safe in the office-vault, at Louisville, myself; Harkins left said office about half past seven o'clock on the evening of May 22d, 1868, with that safe and the package in it, and I never saw the said safe or package afterwards."

Fifth. To the fifth interrogatory he saith: "He knoweth not."

First. To the cross-interrogatory he saith: "On May 22d, 1868, at the Adams Express office, in Louisville, Kentucky, about half past six in the evening, in the possesson of Thomas G. Harkins; I don't know what became of said package afterwards, of my own knowledge."

And further says not.

ALANSON M. RUTER.

And the said WILLIAM R. SHELBY, of the county of Lincoln and State of Kentucky, by occupation a farmer, aged twenty-six years and upwards, being duly and publicly sworn, pursuant to the direc-
49 tions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "William R. Shelby; am twenty-six years of age; I reside in Lincoln County, Kentucky, one mile from South Danville, and am a farmer."

Second. To the second interrogatory he saith: "I was, as money-check clerk. My official duties were to receive the money and valuable packages from the messengers as they came in, and during the day to deliver them to the way-bill clerk, taking his receipt, and during the night to deposit them in my safe in the vault of said company. I was so employed during said month of May, 1868, at the office of said company in Louisville, Kentucky."

Third. To the third interrogatory he saith: "Yes, sir; I recollect receiving such a package. I made no entries in any books or papers in reference to such package, so that I cannot produce any."

Fourth. To the fourth interrogatory he saith: "I received the said package from John Lyons, the messenger of the said Adams Express Company, who ran on the steamer Tarascon, on the morning of May 22d, 1868, I think about eleven o'clock a. m., and as soon as I got it I delivered it to Alanson M. Ruter, the way-bill clerk of said company, at the office of said company in Louisville, Kentucky. The said package was sealed and in good order when I received it from the said Lyons; and it was sealed and in good order when I delivered it to the said Ruter. It was not put into any safe by me, for it was my duty simply to deliver it to said Ruter, which I did on its reception. I don't know what became of the package after I delivered it to the said Ruter."

Fifth. To the fifth interrogatory he saith: "I do not."

50 First. To the first cross-interrogatory he saith: "On the morn-

ing of May 22d, 1868, about as near noon as I can remember, and at the office of the Adams Express Company, in Louisville, Kentucky, inside of said office, in the possession of said Alanson M. Ruter, the way-bill clerk of said company, and the same person to whom I delivered it after I got it from said Lyons. I know, for this reason, that I personally delivered the said package to said Ruter, but what became of it afterwards I do not know of my own knowledge."

And further says not.

WILLIAM R. SHELBY.

51 *Clarksville commission.*

Domestic bill of lading. Southern Express Company.

No. 2.] EXPRESS FORWARDERS.

$12,050.00 bonds.] MAY 21ST, 1868.

Received from First Nat'l Bank of Clarksville, one (1) pack., sealed, and said to contain twelve thousand and fifty dollars in seven-thirty U. S. bonds.

(Addressed) "B. SEAMAN, Cas., New York."

Upon the special acceptance and agreement that this company is to forward the same to its agent nearest or most convenient to destination only, and there to deliver the same to other parties to complete the transportation—such delivery to terminate all liability of this company for such package; and also, that this company are not to be liable in any manner or to any extent for any loss, damage, or detention of such package or of its contents, or of any portion thereof, occasioned by the acts of God, or by any person or persons acting or claiming to act in any military or other capacity in hostility to the Government of the United States, or occasioned by civil or military authority, or by the acts of any armed or other mob, or riotous assemblage, piracy, or the dangers incident to a time of war, nor when occasioned by the dangers of railroad transportation, or ocean or river navigation, or by fire or steam. The shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to, and enure to the benefit of, each and every company or person to whom the Southern Express Company may entrust or deliver the above-described property or transportation, and shall define and limit the liability therefor of such other company or person. In no event is this company to be liable for a greater sum than that above mentioned, nor shall it be liable for any such loss unless the claim therefor shall be made in writing, at this office, within thirty days from this date, in a statement to which this receipt shall be annexed.

For the company.

R. M. PROUTY, *Ag't.*

Freight, $18.10.

The following is on the back of the bill of lading:

Received, New York, June 12th, 1868, of the Adams Express Company, thirteen thousand five hundred and thirty-nine $\frac{65}{100}$ dollars, in full settlement of claim for within U. S. 7-30 notes, ($13,539$\frac{65}{100}$.)

FOURTH NATIONAL BANK,
By B. SEAMAN, *Cas.*

(On the margin:)

Insured by Southern Express Company, for to only except against loss occasioned by the public enemy.

Insurance, $. For the company.

52 Common pleas.

DINSMORE, PRESIDENT, }
vs.
DUNCAN ET AL. }

Interrogatories to be administered to the witnesses hereinafter named by James E. Bailey, of Clarksville, Tenn., commissioner, witnesses to be produced, sworn, and examined on behalf of the plaintiff.

To S. F. Beaumont, W. P. Hume, and J. W. Hume:

First. What is your name, age, residence, and occupation?

Second. Did you have any connection, in the month of May, 1868, with the First National Bank of Clarksville, Tenn.? If yea, state what such connection was, when it commenced, and when it terminated.

Third. Did the said bank on or about the 21st of May, 1868, place in an envelope to be sent to New York, any, and if so how many, United States Treasury notes or bonds? If yea, state,

1. The denominations, values, numbers, and letters of such notes or bonds.

2. What endorsement, if any, was made upon the said bonds, and by whom and when, and what was the language thereof?

53 3. Was any entry made in the books of said bank of said notes or bonds? And if so, annex a copy thereof to your deposition.

Fourth. If you say that the notes or bonds which you may have mentioned were intended by the said bank to be sent from Clarksville to New York, then state what was done by said bank with reference to carrying out such intention?

Fifth. Were the said notes or bonds placed in an envelope? And if so, by whom? Were they counted and numbered; and if so, by whom? Were they sealed; and if so, by whom? And was the package addressed by any one; and if so, by whom, and to whom was the same addressed?

Sixth. Was the said package delivered to any, and if so, what express company, and what was the name of the agent to whom the same was so delivered?

Seventh. Did the said bank receive a receipt from such express company for the said package; and, if yea, look at the receipt hereto annexed, and state whether that is the receipt which the said bank then received?

Eighth. Did the said bank ever receive from the parties to whom the said package was addressed any acknowledgement of the receipt thereof?

Ninth. Do you know any other matter or thing which may tend to the benefit or advantage of the plaintiff in this suit? If yea, declare the same as fully and at large as if you had been particularly interrogated thereunto.

To R. M. Prouty:

First. What is your name, age, residence, and occupation?

Second. Were you in the employment of the Southern Express Company at Clarksville, Tenn., in the month of May, 1868?

54 Third. Look at the receipt hereto annexed, and state if the same was signed by you, and is in your genuine handwriting?

Fourth. If you say that the same is signed by you, then state all that you did with the sealed package described in such receipt, and whether the said package was sealed, as stated, at the time of signing the receipt.

Give all the particulars of your conduct and actions in reference to said package.

Fifth. Do you know any other matter or thing which may tend to the benefit or advantage of the plaintiff in this suit? If yea, declare the same as fully and at large as if you had been particularly interrogated thereunto.

BLATCHFORD, SEWARD & GRISWOLD,
Plaintiff's Attorneys, 29 Nassau Street, New York.

Court of common pleas for the city and county of New York

Cross-interrogatories to be administered to S. F. Beaumont, W. P. Hume, and J. W. Hume, witnesses, to be produced, sworn, and examined on the part of the plaintiff, in a certain action pending and at issue in the court of common pleas for the city and county of New York, between William B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, under and by virtue of the annexed commission.

First cross-interrogatory. State particularly the duties which
55 you were called upon to discharge in the course of your connection with the First National Bank of Clarksville, Tenn.

Second cross-interrogatory. State your means of knowledge as to the matters testified to in answer to the third direct interrogatory. By what means are you able to state the denominations, values, numbers, and letters of the notes or bonds referred to in the said third interrogatory? If you have testified from any book, paper, or memorandum, state in whose handwriting is each and every such book, paper, and memorandum from which you have testified, or by means of which you may have refreshed your recollection in answering the said direct interrogatory, and when the same was made, and from what source?

Third cross-interrogatory. From what source do you derive your knowledge or information as to the matters testified to by you in answer to the fourth direct interrogatory? Did you personally do anything, and if anything, what did you do in respect to sending the notes or bonds referred to from Clarksville to New York?

Fourth cross-interrogatory. State your means of knowledge as to the matters testified to by you in answer to the fifth direct interrogatory.

Fifth cross-interrogatory. State your means of knowledge as to the matters testified to by you in answer to the sixth direct interrogatory.

Sixth cross-interrogatory. State your means of knowledge as to the matters testified to by you in answer to the seventh direct interrogatory.

Seventh cross-interrogatory. If you have stated in answer to
56 any of the direct or cross interrogatories that you ever saw any of the notes or bonds referred to in the said interrogatories, state when and where, and in whose hands you last saw them, and each of them.

BOWDOIN, LAROCQUE & BARLOW,
Attorneys for the Defendants.

Cross-interrogatories to be administered to R. M. Prouty, a witness to be produced, sworn, and examined on the part of the plaintiff, in a certain action pending and at issue in the court of common pleas for the city and county of New York, between B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David

Duncan, William Watts Sherman, and Francis H. Grain, defendants, under and by virtue of the annexed commission.

First cross-interrogatory. What is your present occupation?

Second cross-interrogatory. When, where, and in whose custody was the sealed package mentioned in the direct interrogatories when you last saw the same?

BOWDOIN, LAROCQUE & BARLOW,
Attorneys for the Defendants.

THE STATE OF TENNESSEE,
County of Montgomery:

Depositions of witnesses produced, sworn, and examined, the twentieth day of April, in the year one thousand eight hundred and sixty-nine, at Clarksville, in the county of Montgomery, State of Tennessee, under and in virtue of a commission issued out of the court of
57 common pleas for the city and county of New York, in a certain cause therein depending, and at issue between William B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, as follows:

S. F. BEAUMONT, of the city of Clarksville, county of Montgomery, State of Tennessee, aged forty-three years, by occupation a tobacconist, and president of the First National Bank of Clarksville, being duly and publicly sworn, pursuant to the directions herein annexed, and examined on the part of the plaintiff, does depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is Sterling F. Beaumont; age, forty-three years; residence, Clarksville, Montgomery County, Tennessee; occupation, tobacconist and president of the First National Bank, Clarksville."

Second. To the second interrogatory he saith: "I was president of the First National Bank at Clarksville in the month of May, 1868; was elected the president of the bank when it was first organized; have been its president from that time to this day."

Third. To the third interrogatory he saith: "Of my own knowledge I cannot speak of the matters inquired about. The only information which I have was acquired from conversations with William P. Hume, the cashier; and J. W. Hume, the clerk of said bank. The duties of my office require that I shall be at the office of the bank for a short time only each day. I have not the custody of the books and papers, and cannot, without having a copy furnished me, give the information desired as to the entries on the books. The information I got from W. P. Hume, cashier, and J. W. Hume, clerk, was, that Leroy Taliaferro had brought to the bank ($12,000 or $12,500) twelve thousand
58 dollars, or twelve thousand five hundred dollars, of United States bonds, the character of which I do not remember, to be forwarded to the city of New York, and exchanged for other bonds of the United States, of a different character. The numbers, values, denomination, or letters, I do not know, nor do I know how or by whom, or in what language they were endorsed. All this information will be got from the cashier or clerk, W. P. Hume and J. W. Hume."

Fourth. To the fourth interrogatory he saith: "That he was informed by the said cashier and clerk that said bonds were delivered to Rob't M. Prouty, agent at Clarksville, Tennessee, for the Southern Express Company, to be forwarded to the city of New York."

Fifth. To the fifth interrogatory he saith: "He knoweth not, except from information acquired post litem motam."

Sixth. To the sixth interrogatory he saith: "He knoweth not, except as above set forth."

Seventh. To the seventh interrogatory he saith: "He knoweth not, except from information acquired as above." The receipt, said by the Messrs. Hume to have been taken by them, was shown to witness; and he believes the paper referred to in the interrogatory to be the same shown to him by Hume.

Eighth. To the eighth interrogatory he saith: "He knoweth not; but was informed by the officers of the bank that no such acknowledgment or receipt was ever received. The witness himself never saw or heard of one."

Ninth. To the ninth interrogatory he saith: "He knows nothing."

First. To the first cross-interrogatory he saith: "The witness executes a supervising control over the general affairs and interests of the
50 bank, but has nothing whatever to do with matters of detail or the executive business, except in case of sickness of the cashier. His office is, to a certain extent, administrative, not executive."

Second. To the second cross-interrogatory he saith: "That his answer to the direct inquiry made in the third interrogatory gives all the information he has, and the means of acquiring it."

Third. To the third cross-interrogatory he saith: "That the matter is fully explained in his answer to the fourth direct interrogatory."

Fourth. To the fourth cross-interrogatory he saith: "That he has no knowledge of the facts inquired about."

Fifth. To the fifth cross-interrogatory he saith: "That he has already stated that he knows nothing, but got his information from the cashier and clerk."

Sixth. To the sixth cross-interrogatory he saith: "That he has already stated the source from which he derived his information."

Seventh. To the seventh cross-interrogatory he saith: "That he never at any time saw any of the bonds."

S. F. BEAUMONT.

WILLIAM P. HUME, of the city of Clarksville, county of Montgomery, State of Tennessee, aged fifty-two years, by occupation cashier of a bank, being duly and publicly sworn, pursuant to the directions herein annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is W. P.
60 Hume, or William P. Hume; am aged fifty-two years; my residence, Clarksville, Montgomery County, Tennessee; my occupation, cashier of the First National Bank at Clarksville, Tennessee."

Second. To the second interrogatory he saith: "He has been the cashier of the said bank from the time of its organization, in the year 1865 or 1866, to this day, and was its cashier during the entire month of May, 1868."

Third. To the third interrogatory he saith: "That on the 21st day of May, 1868, the said bank did place certain United States seven-thirty (7-30) Treasury notes or bonds in an envelope to be sent to the city of New York; the envelope on its back directed to B. Seaman, cash., New York. The sum total of the notes or bonds were ($12,050) twelve thousand and fifty dollars. Witness does not remember the denomination, numbers, letters, and values of the bonds. Lists of all were retained

in the bank, made out by J. W. Hume, cashier. A correct copy was afterwards sent to the Fourth National Bank, at New York City, and the copy was handed to Robert M. Prouty, agent at Clarksville for the Southern Express Company, and the original was sent, on the 1st October, 1868, by mail, to C. A. Seward, esq., counsel for the Adams Express Company, New York, who now, probably, has the same in his possession. The list was enclosed in a letter signed by S. F. Beaumont, president of the bank. The bank did not retain a copy."

"Witness cannot now state the value of said bonds or notes. Adams Express Company afterwards paid to bank thirteen thousand five hundred and thirty-nine dollars and sixty-five cents ($13,539\frac{65}{100}$) for the value and interest accrued thereon.

"Witness does not remember the endorsements further than that a few of the bonds bore the endorsement of a woman named Taliaferro; and others were endorsed by Leroy Taliaferro. He does not remember the language of the endorsements. No entry of said notes or bonds was made on the books of the bank."

61 Fourth. To the fourth interrogatory he saith: "That the said notes or bonds, thus enclosed in an envelope, directed to B. Seaman, esq., cash., New York City, were deposited with R. M. Prouty, agent for the Southern Express Company, on the 21st day of May, 1868, to be forwarded as directed on the envelope."

Fifth. To the fifth interrogatory he saith: "The notes or bonds were placed in an envelope, as stated by J. W. Hume, clerk of the bank, who took a list of numbers, amounts, and letters of each, and also of date. He also sealed the envelope and addressed it, as stated, to B. Seaman, cash., New York."

Sixth. To the sixth interrogatory he saith: "The package was delivered to R. M. Prouty, agent at Clarksville, Tennessee, for the Southern Express Company."

Seventh. To the seventh interrogatory he saith: "The bank took a receipt from said Prouty, agent, for the package, and the receipt hereto annexed is the one received by the bank."

Eighth. To the eighth interrogatory he saith: "That no acknowledgment of the receipt of the package was ever received by the bank from the person to whom it was addressed."

Ninth. To the ninth interrogatory he saith: "He does not."

First. To the first cross-interrogatory he saith: "I was the cashier of the bank and its general executive officer."

Second. To the second cross-interrogatory he saith: "The sum total of the notes or bonds I know to have been $12,050, (twelve thousand and fifty dollars,) because the witness in person entered the amount to the credit of the parties on the books of the bank, and wrote the

62 letter to B. Seaman, cash. The entry on the books was made and the letter written on the 21st day of May, 1868."

Third. To the third cross-interrogatory he saith: "That the bonds or notes were handed to J. W. Hume to make out a list of dates, amounts, letters, &c., and to place in an envelope addressed to Seaman, and witness' information was derived from J. W. Hume."

Fourth. To the fourth cross-interrogatory he saith: "My information was received from J. W. Hume and from the receipt signed by the agent for the express company referred to in a former part of the deposition."

Sixth. To the sixth cross-interrogatory he saith: "His information was got from the same person and paper mentioned in the last preceding answer."

Seventh. To the seventh cross-interrogatory he saith: "He makes the same answer as to the sixth."

Eighth. To the eighth cross-interrogatory he saith: "In the hands of J. W. Hume, who was and is clerk of said First National Bank at Clarksville, Tennessee."

W. P. HUME.

JAMES W. HUME, of the city of Clarksville, county of Montgomery, State of Tennessee; aged twenty-one years; by occupation clerk of a bank, being duly and publicly sworn pursuant to the directions herein annexed, and examined on the part of the plaintiff, doth depose and say as follows:

First. To the first interrogatory he saith: "My name is James W. Hume; residence, Clarksville, Tennessee; occupation, clerk of the First National Bank at Clarksville, Tenn."

Second. To the second interrogatory he saith: "He was on
63 the 21st of May, 1868, as he had been from the organization of the bank to that day and continuously since, the clerk of said bank, keeping the individual ledger.

Third. To the third interrogatory he saith: "That on the 21st day of May, 1868, the said bank did place in an envelope twelve thousand and fifty dollars of seven-thirty (7-30) United States Treasury bonds in an envelope, addressed on the back, B. Seaman, cash., Fourth National Bank, New York.

"The denominations of the bonds were different; some were fifties, some one hundreds, some five hundreds, and others one thousand; the values, numbers, and letters are not remembered; some of them were endorsed by Leroy Taliaferro, some by a woman named Taliaferro, and others were not endorsed. No entry was made in the books of the bank, except to credit the owners by the amount.

"The witness took a list of numbers, letters and dates, and amounts, which was sent to C. A. Seward, esq., attorney, New York City, on the 1st October, 1868, but the lists were not entered in the books, nor has a copy been returned by the bank."

Fourth. To the fourth interrogatory he saith: "That the said bonds thus enclosed in an envelope directed to B. Seaman, cash. of the Fourth National Bank of New York City, were deposited by witness with R. M. Prouty, agent at Clarksville, Tennessee, of the Southern Express Company, on the 21st May, 1868, to be forwarded as addressed."

Fifth. To the fifth interrogatory he saith: "That the bonds were counted and numbered by the witness, the package was sealed by the witness, and was by him addressed to B. Seaman, as before stated."

Sixth. To the sixth interrogatory he saith: "That the package thus addressed was delivered to R. M. Prouty, agent at Clarksville, Tennessee, for the Southern Express Company."

Seventh. To the seventh interrogatory he saith: "That the
64 bank did receive a receipt from the said express company, and the receipt hereto annexed is the one which the bank received."

Eighth. To the eighth interrogatory he saith: "The bank never did receive any acknowledgment of its receipt from Mr. Seaman."

Ninth. To the ninth interrogatory he said: "He does not."

Cross-examination:

First. To the first cross-interrogatory he saith: "That his duties were to keep the individual ledger and general cash."

Second. To the second cross-interrogatory he saith: "That the acts done and mentioned in said answer were done by the witness himself. The entry on the books of the bank of 21st May, 1868, give the date of

the transaction. This entry was made by W. P. Hume, cash., on the scratcher, and posted by me into the individual ledger."

Third. To the third cross-interrogatory he saith: "From having done the act in person. The witness, in reply to the direct examination, has stated fully what he did."

Fourth. To the fourth cross-interrogatory he saith: "The answer shows the means of knowledge; the witness transacted the business."

Fifth. To the fifth cross-interrogatory he saith: "That the act was done by the witness."

Sixth. To the sixth cross-interrogatory he saith: "That the receipt was handed to the witness by the agent for the express company."

Seventh. To the seventh cross-interrogatory he saith: "That
65 the last time witness saw the bonds was when he placed them in the envelope, and the last time he saw the envelope was when he gave it to the agent of the Express Company."

JAS. W. HUME.

ROBERT M. PROUTY, of the city of Clarksville, county of Montgomery, State of Tennessee, aged forty-six years, by occupation agent of an express company, being duly and publicly sworn, pursuant to the directions herein annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "His name is Robert M. Prouty; aged forty-six years; residence, Clarksville, Montgomery; occupation, for three years past, agent for the Southern Express Company."

Second. To the second interrogatory he saith: "He was in the employment of the Southern Express Company, at Clarksville, during the entire month of May, 1868."

Third. To the third interrogatory he saith: "The receipt which is hereto annexed was signed by me, and the signature is my own genuine handwriting."

Fourth. To the fourth interrogatory he saith: "That the package sealed and addressed to 'B. Seaman, cash., New York,' was brought to him on the 21st day of May, 1868, at the office of the Southern Express Company, at Clarksville, Tennessee, by J. W. Hume, clerk for the First National Bank at Clarksville; was received by witness as agent for the said express company, to be forwarded to its address. The package was sealed, and purported to contain $12,050.00, (twelve thousand and fifty dollars,) of 7-30 U. S. bonds. The freight, eighteen dollars and ten cents, was paid; and witness executed said receipt therefor. On
66 the same evening witness carried the package to the railroad passenger-depot at Clarksville, Tennessee, and delivered said package, in the condition it was delivered to him, into the keeping of the messenger of the Southern Express Company, on the train of cars going north, to be transported as required by the condition of the receipt. This was done in the discharge of his duty, and in accordance with the usage in such cases."

Fifth. To the fifth interrogatory he saith: "He does not."

Cross-examination:

First. To the first cross-interrogatory he saith: "That he is now agent, at Clarksville, for the Southern Express Company."

Second. To the second cross-interrogatory he saith: "It was in the possession of Merriwether, the messenger, on the train of cars going north, from Clarksville, on the evening of the 21st day of May, 1868." Witness means the messenger for the Southern Express Company.

R. M. PROUTY.

67 *Louisville commission.*

Common pleas.

DINSMORE, PRESIDENT,
vs.
DUNCAN ET AL.

Interrogatories to be administered to the witnesses hereinafter named, by John M. Harlan, esq., of Louisville, Kentucky, commissioner, under and pursuant to the annexed commission, issued on behalf of the plaintiff herein.

To A. F. Talbot, W. R. Shelby, A. M. Ruter, Thomas G. Harkins, and A. P. Merriwether.

First. What is your name, age, residence, and occupation?

Second. Were you in the employment of the Adams Express Company in the month of May, 1868? If yea, state how long you had been in such employment, and what were your official duties. State fully and particularly.

Third. What, if anything, do you know of a certain sealed package said to contain $12,050 bonds, shipped from Clarksville, Tennessee, to B. Seaman, cashier, New York, on or about the 21st of May, 1868?

68 Fourth. If you say that you recollect such a package, state whether or not the same was sealed when you saw it; whether any entries were made by you of or concerning said package, and if yea, produce and annex copies of the same to your deposition.

Fifth. If you state that you recollect such package, then state fully and particularly everything that you did in reference to such package, and state particularly from whom you received, and to whom you delivered the same, giving the name of such person and his official position in full, and the date of such delivery, and when said package left your possession; and if you, or either of you say you put the same into any safe, give the number of such safe, and state by whom such safe was locked and who kept the key thereof, and who had the custody of such safe, and what became of such safe and of such package.

Sixth. Do you know any other matter or thing which may tend to the benefit or advantage of the plaintiff herein? If yea, declare the same as fully and at large as if you had been particularly interrogated thereunto.

BLATCHFORD, SEWARD & GRISWOLD,
Plaintiff's Attorneys, 29 Nassau Street, New York.

69 Court of common pleas for the city and county of New York.

Cross-interrogatories to be administered to A. F. Talbot, W. R. Shelby, A. M. Ruter, Thomas G. Harkins, and A. P. Merriwether, witnesses to be produced, sworn, and examined on the part of the plaintiff in a certain action pending and at issue in the court of common pleas for the city and county of New York, between William B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, under and by virtue of the annexed commission.

First cross-interrogatory. State your means of knowledge as to the matters testified to by you in answer to the third direct interrogatory.

Second cross-interrogatory. If you have testified that you ever saw the package mentioned in the direct interrogatories, state when, where, and in whose custody you last saw the said package.

How do you know what became of said package?

BOWDOIN, LAROCQUE & BARLOW,
Attorneys for the Defendants.

(Copy.—2 B.)

[No. 180.]

THE ADAMS EXPRESS COMPANY, MERRIWETHER, MESS.

From Clarksville, Tenn., to Louisville, Ky., May 21st, 1868.

Packages.	Description.	Value.	Consignor.	Consignee.	Charges.	Freight.	Destination.	Fr't collected.	Prepaid.	Remarks
1 pd. C. O. D.		$11 25	S. M.	Am. Ex. Co		35		25		
1 " "		51 00	S. M.	Fitch, Lindsay & Co		35		45		
1 rst. d'ft.		259 20	S. M.	Jones, Tapp & Co		25		25		
1 ps.		30 00	S. M.	Zaug, Vagt & Co		25		25		
1 "		765 00	S. M.	W. B. Radford		65		90		
1 pd. C. O. D.		26 25	S. M.	Harnden Ex. Co		35	Cincinnati	25		
1 " "		44 60	S. M.	Cinc. Type Foundry Co		35	"	25		
1 " "		25 45	S. M.	R. Buist, sr.		35	Philadelphia	25		
Letter			S. M.	H. & C. Soule & Co			New York		25	
1 ps.		12,050 00	1 bonds Shalby Merriwether	B. Seaman			"		18 10	

L. & M. 22 5 A. M. 21.

A. P. MERRIWETHER.

71 P. M. NORTH, May 21, '62.

Received in good order of the Adams Express Company, by the hands of Talbott, messenger, the following articles to which our names are attached:

Date of way-bill.	No. of way-bill.	Where from.	P'k'g's.	Amount.	Marks.	Destination.	Charges.	Freight.	Prepaid.	Signature acknowledging receipt of packages.
May 21		Nash	1 pa	Val.	Ad. Ex. Co	Lou				S.
May 21	98	Gallatin	1 pa	$32 75	J. L. Botsford	"				S.
			1 "	100 00	Loring, McG. & Co	"				S.
			1 "	634 00	I. Joseph Sons	"				S.
			1 "	200 00	Mrs. S. Crugan	Chester, Ill				S.
			1 "	179 00	J. F. Howell	Lou				S.
	94	Franklin	1 pd. C. O. D	126 00	J. Longly	Cincit., O				S.
			1 pd	410 00	Jackson L. & Co	Lou				S.
			1 "	50 00	Serg. F. Stone	"				S.
			1 "	9 00	Dr. D. B. Richards	N. York				S.
			1 "	3 20	A. Wegman	Lou				S.
			1 "	15 25	J. W. Morrill	"				S.
			1 "	154 10	Am. Ex. Co	"				S.
			1 pa	150 00	Carter & Br	"				S.
			1 "	100 00	Smith, A. & Co	"				S.
	Mem.	M. & L. Rt	1 sealed safe	244	Ad. Ex. Co	"				S.
	305	B. Green	1 pd. C. O. D	1, 250 00	Bank of Kentucky	"				S.
			1 pd	17 50	F. Schad	"				S.
			1 "	50 00	C. Jennie	"				S.
			1 pd	60 85	Carter & Bro	"				S.
			1 "	80 00	J. R. Blackerman	N. York				S.
			1 "	34 35	J. H. Rhodes	Cincinnati				S.
			1 "	Reports.		"				Shelby.

A. F. TALBOTT.
W. R. SHELBY.

72 P. M. NORTH, May 21, '68.

Received in good order of the Adams Express Company, by the hands of Talbott, messenger, the following articles to which our names are attached:

Date of way-bill.	No of way-bill.	Where from.	P'k'g's.	Amount.	Marks.	Destination.	Charges.	Freight.	Prepaid.	Signature acknowledging receipt of packages.
May 21	97	Gallatin	1 b. b'x		J. C. Warner	Lou.				
			1 p	136	Mrs. E. A. Williams	Kimmundy, Ill.				
	Mafst.	M. & L. Rt.	1 pa		A. W. Evans	Portsmo'th, O.				
		Merriwether, Mess.	1 tak	135	W. A. Conage	Lou.				
			1 pa	25	C. Fountain	Nelson Furnace.				
			1 "	4	R. Boyd	Lou.				
			1 pa	15	H. W. Wyncoop	Crestline, O.				
			1 pa		J. C. Luber	Cin'ti.				
			1 pa	110	A. Templeton	S. Lou.				
			1 pa		N. G. Cobb	Buffalo, N. Y.				
			1 "		C. Alexander	Paris, Ky.				
			1 pa	35	Baird Bros	Lou.				
			1 p	90	W. H. Stokes & Co	"				
			1 pa	15¼	Strong & Co	"				
			1 pa	25	Mrs. J. Luck	Midway.				
	304	B. Green	5 b'd'l' brooms	125	O. Rawson	Lou.				
			6 " "	150	Lane & Bartlett	"				
			1 freezer	35	Lowery, Perin & Co	Cinn'ti, O.				

L. M. DEAR.

71 P. M. NORTH, May 21, '62.

Received in good order of the Adams Express Company, by the hands of Talbott, messenger, the following articles to which our names are attached:

Date of way-bill.	No. of way-bill.	Where from.	P'k'g's.	Amount.	Marks.	Destination.	Charges.	Freight.	Prepaid.	Signature acknowledging receipt of packages.
May 21		Nash	1 pa	Val.	Ad. Ex. Co	Lou				S.
May 21	98	Gallatin	1 pa	$32 75	J. L. Botsford	"				S.
			1 "	100 00	Loring, McG. & Co	"				S.
			1 "	634 00	I. Joseph Sons	"				S.
			1 "	200 00	Mrs. S. Crugan	Chester, Ill				S.
			1 "	179 00	J. F. Howell	Lou				S.
			1 pd. C. O. D	126 00	J. Longly	Cincit., O				S.
	94	Franklin	1 pd	410 00	Jackson L. & Co	Lou				S.
			1 "	50 00	Serg. F. Stone	"				S.
			1 "	9 00	Dr. D. B. Richards	N. York				S.
			1 "	3 20	A. Wegman	Lou				S.
			1 "	15 25	J. W. Morrill	"				S.
			1 "	154 10	Am. Ex. Co	"				S.
			1 pa	150 00	Carter & Br	"				S.
			1 "	100 00	Smith, A. & Co	"				S.
	Mem.	M. & L. Rt	1 sealed safe	244	Ad. Ex. Co	"				S.
	305	B. Green	1 pd. C. O. D	1,250 00	Bank of Kentucky	"				S.
			1 pd	17 50	F. Schad	"				S.
			1 "	50 00	C. Jennie	"				S.
			1 pd	60 85	Carter & Bro	"				S.
			1 "	80 00	J. R. Blackerman	N. York				S.
			1 "	34 35	J. H. Rhodes	Cincinnati				S.
			1 "	Reports.		"				Shelby.

A. F. TALBOTT.
W. R. SHELBY.

72 P. M. NORTH, May 21, '62.

Received in good order of the Adams Express Company, by the hands of Talbott, messenger, the following articles to which our names are attached:

Date of way-bill.	No of way-bill.	Where from.	P'k'g's.	Amount.	Marks.	Destination.	Charges.	Freight.	Prepaid.	Signature acknowledging receipt of packages.
May 21	97	Gallatin	1 b. b'x		J. C. Warner	Lou.				
			1 p	136	Mrs. E. A. Williams	Kinmundy, Ill.				
	Mafst.	M. & L. Rt. Merriwether, Mess.	1 pa		A. W. Evans	Portsmo'th, O.				
			1 tak	135	W. A. Conage	Lou.				
			1 pa	25	C. Fountain	Nelson Furnace.				
			1 "	4	R. Boyd	Lou.				
			1 pa	15	H. W. Wyncoop	Crestline, O.				
			1 pa		J. C. Luber	Cin'ti.				
			1 pa	110	A. Templeton	S. Lou.				
			1 pa		N. G. Cobb	Buffalo, N. Y.				
			1 "		C. Alexander	Paris, Ky.				
			1 pa	35	Baird Bros	Lou.				
			1 p	90	W. H. Stokes & Co	"				
			1 pa	15½	Strong & Co	"				
			1 pa	25	Mrs. J. Luck	Midway.				
	304	B. Green	5 b'd'l brooms	125	O. Rawson	Lou.				
			6 " "	150	Lane & Bartlett	"				
			1 freezer	35	Lowery, Perin & Co	Cinn'ti, O.				

L. M. DEAR.

73 P. M. NORTH, May 21, '68.

Received in good order of the Adams Express Company, by the hands of Talbott, messenger, the following articles to which our names are attached:

Date of way-bill.	No. of way-bill.	Where from.	Pkgs.	Amount.	Marks.	Destination.	Charges.	Freight	Prepaid.	Signatures acknowledging receipt of packages.
May 21	Nash....	Nash.....	1 bag.....	Val.	Adams Ex. Co.....	Lou.....				S.
" "	98	Gallatin...	1 pa.....	$32 75	J. L. Botsford.....	"				S.
			1 "	100 00	Loring, McG. & Co.....	"				S.
			1 "	634 00	L. Joseph & Son.....	"				S.
			1 "	200 00	Mrs. S. Orrugan.....	Chester, Ills.....				S.
			1 "	179 00	J. F. Howell.....	Lou.....				S.
			1 pa. C. O. D.....	26 10	Serg. Longley.....	Cinti., O				S.
	94	Franklin	1 pa.....	410 00	Jackson, L. & Co.....	Lou.....				S.
			1 "	50 00	J. F. Stone.....	"				S.
			1 "	9 00	Dr. D. B. Richards.....	N. York.....				S.
			1 pa. C. O. D.....	3 20	A. Wegman.....	Lou.....				S.
			1 "	15 25	J. W. Morrill.....	"				S.
			1 "	154 00	Am. Ex. Co.....	"				S.
			1 pa.....	150 00	Carter & Bro.....	"				S.
			1 "	100 00	Smith, A. & Co.....	"				S.
	Man	M. & L. Rt.....	1 sealed safe.....	944	Ad. Ex. Co.....	"				S.
	305	B. Green.....	1 pa.....	1,250 00	Bank of Kentucky.....	"				S.
			1 pd. C. O. D.....	17 50	F. Schad.....	"				S.
			1 " "	30 00	C. Jennie.....	"				S.
			1 pa.....	60 85	Carter & Bro.....	"				S.
			1 "	80 00	J. R. Blackerman.....	N. York.....				S.
			1 "	34 35	J. H. Rhodes.....	Cinti., O.....				S.
			1 "	Reporta.	" "	"				Shelby.

A. F. TALBOTT.
W. R. SHELBY.

74 P. M. NORTH, May 21st, '68.

Received in good order of the Adams Express Company, by the hands of A. T. Talbott, messenger, the following articles to which our names are attached :

Date of way-bill.	No. of way-bill.	Where from.	Pkgs.	Amount.	Marks.	Destination.	Charges.	Freight.	Prepaid.	Signature acknowledging receipt of packages.
May 21	97	Gallatin	1 b. bx		J. C. Warner	Louisville, Ky				
			1 bx	136	Mrs. E. A. Williams	Kinmundy, Ill.				
		M. & L. Rt.	1 pa		A. H. Evans	Portsmouth, O				
21	Mafst.	Merriwether, Mess.	1 tak	135	W. A. Conage	Lou., Ky				
			1 pa	25	C. Fountain	Nelson Furnace, Ky				
			1 "	4	R. Boyd	Louisville, "				
			1 pa	15	H. W. Wynkoop	Crestline, O.				
			1 pa		J. C. Ruber	Cinti., O				
			1 bbl	110	A. Templeton	Lou., Ky				
			1 pa		H. G. Cobb	Buffalo, N. Y.				
			1 "		C. Alexander	Paris, Ky				
			1 b. bx	5	Baird Bros	Lou				
			1 box	90	W. H. Stokes & Co	"				
			1 pa	5	Strong & Co	"				
			1 box	25	Mrs. J. Lack	Midway				
21	304	B. Green	5 bdl. brooms	125	O. Rawson	Lou.				
			6 "		Lane & Bartlett	Lou.				
			1 freezer	35	Lowry, Perin & Co	Cinti., O				

F. M. DEAR.

75 (Copy.)

No. 180.] THE ADAMS EXPRESS COMPANY, MERRIWETHER, MESS'R.

From Clarksville, Tenn., to Louisville, Ky., May 21st, 1868.

Packages.	Description.	Dolls. Cts.	From whom received.	To whom addressed.	Destination.	Charges.	Freight.	Prepaid.	Remarks.
P'd C. O. D.	.....	11 25	S. M.	A'm Ex. Co			35		Exhibit B. B. B. in Talbot's deposition,
" "	.....	51 00	S. M.	Fitch, Lindsey Co			35		
Ret. dr'fts.	.....	259 20	S. M.	Jones, Tapp & Co			25		
Pa.	.....	30 00	S. M.	Zaug, Vagt & Co			25		
P'd C. O. D.	.....	765 00	S. M.	W. B. Radford			65		
" "	.....	26 25	S. M.	Harnden Ex. Co	Cincinnati, O		35		
Letter	.....	44 60	S. M.	Cinc. Type Foundry Co	"		35		
Pa	.....	.....	S. M.	H. & G. Soule & Co	New York		.....	25	
Pa.	.....	25 45	S. M.	R. Buist, sr	Philadelphia		35	.....	
		12,050 00	Bonds	B. Seaman	New York		.....	18 10	
			Shelby						
			Merriwether						

22,15 a. m. L. & M. 21. 12,050 00.

A. P. MERRIWETHER.
A. F. TALBOT.
W. R. SHELBY.

76 *A. M. local, Memphis, May 21, 1868.*

No. 180	1 pd. C. O. D	26 25	Clarksville	21	Harnden Ex. Co	R.	25	Cincinnati, O	
	1 " "	44 60	"		Cin. Type Foundry	R.	25	" "	
	1 " "	24 45	"		R. Buist, sr	R.	25	Philadelphia, Pa	
	1 letter	.....	"		H. & G. Soule & Co	R.	.....	New York, N. Y	25
	1 Pa.	12,050 00	Bonds		B. Seaman	R.	.....	" "	18 10

Exhibit, "A. M. R," in Reuter's depo.

A. M. REUTER.
W. R. SHELBY.

No. 1067—9.30 p. m.] *From Louisville, Ky., to New York City.* [May, 22, 1868.

Packages.	Description.	Dolls. Cts.	From whom received.	To whom addressed.	Destination.	Charges C.	Freight F.	Prepaid P.	Remarks.
1 pa	H	81 00	B. Green, 21	Jno. R. Ackerman				Pd.	65c.
1 "	H	9 00	Franklin, "	Dr. D. B. Richards				Pd.	41—
1 letter	H		Clarksville "	H. & G. Soule & Co				Pd.	21—
1 pa	H	12, 050 00	"	B. Seaman				Pd.	$18.10.
1 pd., C. O. D.	H	7 78	O. Boro, 20	Barretts, Palmer & Co		X$\frac{1}{2}$ 50	25		
1 ret. D	H	33 75	" "	Gt. Am. Tea Co			*		
1 gold-dr't	H	190 10	Tell City, 21	Benziger Bros			fc.		
1 pd., C. O. D.	H	20 27	O. Boro, "	A. Benoit		25	25		
1 "	H	47 50	Henderson "	E. E. Tower & Co		35	35		
1 pa	H	680 00	Herbert & Wright	Roger Fills & Co			95		
1 "	H	20 00	G. J. Tiernay	E. Faber				25	
1 "	H	103 55	S. Aron	E. S. Mills & Co			45		
1 " val	H	1, 000 00	Citizen Bk	Natl. Bk. Commerce				1 00	
1 "	H	126 00	G. Bauman & Co	N. Amerman				50	
1 "	H	123 90	M. Aron	E. S. Mills & Co			50		
1 "	H	92 65	E. Cerf & Co	Hecht. Bros			35		
1 "	H	47 60	Mrs. Lee	Hecht Bros			35		
1 pd., C. O. D.	H	10 00	McKenzie, 21	Dr. T. H. Stillwell		50	25		
1 pa	H	1, 530 00	German S. Bk	J. B. Alexander & Co				1 50	
1 " val	Harkins	6 21	A. E. Co	Adams Ex. Co	Boston, Mass		*		
						$1 60	$3 70	$3 25	

(Exhibit A. M. R. 1.)

A. M. RUTER.
T. J. HARKINS.

78 4—C. Money.] CAR-MANIFEST. [Harkins, Mess

9.30 p. m.] *The Adams Express Co., from Louisville, Ky., to New York City, May 22d,* 1868

Packages.	Weight.	Mark.	Destination.	Remarks.
One bag	Val., $16,179.21. Harkins	Adams Express Co	do T. G. Harkins.	A. M. Ruter.

Exhibit A. M. R. 2, in A. M. Ruter's deposition.

79 Money.] [Harkins.

9.30 p. m. *Louisville, K'y, to New York City, May 22d.* 8.

One bag	Val. $16, 179 21 Harkins	Adams Express Co	W. R. Shelby.	H. M. Ruter... T. G. Harkins.

Exhibit A. M. R, 3, in Ruter's deposition.

80 4—C. Money.] CAR-MANIFEST. [Harkins, Mess.

9.30 p. m.] *The Adams Express Co., from Louisville, K'y, to Cincinnati, O., May 22d,* 1868.

Packages.	Weight.	Mark.	Destination.	Remarks.
One safe	103 Harkins	Adams Express Co	do T. D. Harkins.	A. M. Ruter.

Exhibit A. M. R. No. 4, in Ruter's deposition.

81 Money.] EXHIBIT 5 IN RUTER'S DEPOSITION. [Harkins

9.30 p. m.] *Louisville, Ky., to Cincinnati, O., May 22d.* 8.

One safe T. G. Harkins	103 Harkins	Adams Express Co	do	A. M. Ruter.

							C.	F.	P.
1 pa	H	81 00	B. Green	Jno. R. Ackerman					Pd. 65c.
1 "	H	9 00	Franklin	Dr. D. B. Richards					Pd. 41.
1 letter	H		Clarksville	H. & G. Soule & Co					Pd. 21.
1 pa	H	12,050 00	"	B. Seaman		X 2/-			Pd. 18 10.
1 p'd, C. O. D	H	7 78	O. Boro, 20	Barretts, Palmer & Co		50	25		
1 ret. D	H	33 75	"	Gt. Am. Tea Co					
1 gold d'ft	H	190 00	Tell City, 21	Bensiger Bros					
1 p'd, C. O. D	H	20 27	O. Boro, "	A. Benoit		25	25		
1 "	H	47 50	Henderson, 21	E. E. Tower & Co		35	35		
1 pa	H	680 00	Herbert & Wright	Roger Fils & Co			95		
1 pa	H	20 00	G. J. Tierney	E. Faber				25	
1 "	H	103 55	S. Aron	E. S. Mills & Co			45		
1 " val	H	1,000 00	Citizen Bk	Nat. Bank Commerce				1 00	
1 "	H	126 00	G. Bauman & Co	N. Amerman				50	
1 "	H	123 90	W. Aron	E. S. Mills & Co			50		
1 "	H	92 65	E. Serf & Co	Hecht Bros			35		
1 "	H	47 60	Mrs. Lee	Hecht Bros			35		
1 p'd, C. O. D	H	10 00	McKenzie, 21	Dr. T. H. Stillwell		50	25		
1 p'd	H	1,530 00	German S. B'k	J. B. Alexander & Co				1 50	
1 pa, val	Harkins	6 21	A. E. Co	Adams Ex. Co	Boston, Mass				
						$1 60	$3 70	$3 25	

Exhibit A. M. R. 6, in Ruter's deposition.

A. M. REUTER.

T. G. HARKINS.
W. R. SHELBY.

83 Depositions of witnesses produced, sworn and examined the 8th, 9th, 13th, and 20th days of December, in the year one thousand eight hundred and sixty-nine, at the law-office of John M. Harlan, in the city of Louisville, in the State of Kentucky, under and by virtue of a commission issued out of the court of common pleas for the city and county of New-York, in a certain cause therein depending and at issue between William B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, as follows:

A. P. Merriwether, of the city of Louisville, occupation express messenger, aged twenty-three years and upwards, being duly and publicly sworn pursuant to the direction hereto annexed, and examined on the part of the Adams Express Company, plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is A. P. Merriwether; aged twenty-three years and upward; residence in the city of Louisville, Jefferson County, State of Kentucky; occupation that of express messenger.

Second. To the second interrogatory he saith: "I was in the employment of the Adams Express Company, in the month of May, 1868, as a messenger, and I had been such messenger for two or three years prior to that date. In May, 1868, I was messenger for that company from or between Bowling Green, Kentucky, and Memphis, Tennessee, running on the Memphis branch of the Louisville and Nashville Railroad. My official duties were to receive and receipt for all express matter upon that line or route, including money-packages. My duty was to receive express matter from local agents, receipt to them for it, and when
84 I delivered over express matter to other express-agents, local or route, I took their receipts for it.

Third. To the third interrogatory he saith: "I do remember, and remember of such a package as that described in this interrogatory. Upon my route from Memphis, Tennessee, to Bowling Green, Ky., I necessarily passed Clarksville, Tennessee. At the latter place, I, as messenger of the Adams Express Company, received on the 21st of May, 1868, from the local agent of said express company, at Clarksville, Tennessee, various money-packages, including a sealed package, marked to B. Seaman, New York, and marked as containing ($12,050) twelve thousand and fifty dollars in bonds."

Fourth. To the fourth interrogatory he saith: "Said package referred to in answer to the third interrogatory was sealed when I received it, and remained sealed while it was in my possession. There were entries made by me of and concerning said package, upon the Clarksville money way-bill. I produce and annex hereto a true and correct copy of the said way-bill, which was delivered to me by the local agent at Clarksville, when he delivered to me the money-packages therein described. The packages described in that way-bill are the same referred to by me in my answer to interrogatory third. Upon the original way-bill there will be found, as upon said copy, the letters S. and M., the letter S. in ink and the M. in pencil. The 'M.' in pencil was made by me. When I received said packages at Clarksville, I checked each of them off on the way-bill with the letter 'M.' and that is what 'M.' on said copy in pencil means. The letters 'S.' and 'M.' referred to, appear on the right of the 'value' marks in said copy."

Fifth. To the fifth interrogatory he saith: "In addition to what I have already said, I state that the said package, marked to B.
85 Seaman, was delivered to me at the time named by Prouty,

local agent of the express company at Clarksville. I do not now remember his first name. As soon as I checked off said packages received from said agent, including the one to Seaman as aforesaid, I put them in an iron safe provided for me by the express company, and used between Memphis and Bowling Green. The packages all remained in that safe until I reached Bowling Green, on the night of the 21st of May, 1868, when I put the packages, including the one marked to B. Seaman, New York, $12,050 bonds, in an iron safe which was in the office of the Adams Express Company, at Bowling Green, Kentucky, and which safe was used on the route between Bowling Green and Louisville, for the purpose of transporting money packages which came off the Memphis branch and were destined for Louisville and points beyond and north of Louisville. That safe was numbered ("244") two hundred and forty-four. After putting those packages in that safe, including the one above named, marked for B. Seaman, I sealed up the safe with a lead and wire seal in such a manner as that the door of the safe could not be opened without breaking the seal. The safe thus sealed was delivered by me, on the night of the 21st of May, 1868, to A. F. Talbott, the agent of the Adams Express Company on the route between Nashville and Louisville. Talbott left with it immediately on the train from Nashville to Louisville, and that is the last I saw or knew of the safe or its contents. One of the keys of that safe was kept by the agent at Bowling Green, and the other kept at the head office at Louisville. I had no key of it, nor did Talbott. The package alluded to, marked $12,050 bonds, B. Seaman, New York, was not out of my possession after I received it until the safe containing it was delivered as stated to Talbott. I should have stated in the proper connection, that I locked the safe before sealing it, and returned the key to the Bowling Green agent. The official duties of said A. F. Talbott were the same on
86 the route between Nashville and Louisville that mine were between Memphis and Bowling Green."

Sixth. To the sixth interrogatory he saith: "He knoweth not, unless it be that it was impossible for said package marked to B. Seaman to have been broken or taken from my possession while I had it in my possession, as already stated."

First. To the first cross-interrogatory he saith: "My answer to the interrogatories will show my means of knowledge, but I can state that I am fortified in my recollection by having seen my check mark upon the original way-bill delivered to me by the Clarksville local agent, as set out in my answer to interrogatories. I would not have made such check-marks unless I had received a package corresponding with the description in the way-bill; and had it not been sealed when delivered to me, I would not have so checked it, nor would I have received it had it not been sealed. We had orders from the company not to receive unsealed packages."

Second. To the second cross-interrogatory he saith: "My answer to interrogatories show when, where, and in whose custody I last saw the said package. I do not know what became of said package after I delivered the safe to Talbott, containing said package as set out in said answers to interrogatories."

And further saith not.

A. P. MERRIWETHER.

ABNER F. TALBOTT, of the city of Louisville, county of Jefferson, State of Kentucky, occupation, messenger of the Adams Express Company, aged thirty-two years and upwards, being duly and publicly sworn

pursuant to the directions hereto annexed, and examined on the
87 part of the plaintiff, William B. Dinsmore, president of the Adams Express Company, doth depose and say as follows:

First. To the first interrogatory, he saith: "My name is Abner F. Talbott; my age is thirty-two years and upwards; residence, Louisville, Jefferson County, Kentucky; and my occupation is that of a messenger of the Adams Express Company, on the route between Louisville and Memphis."

Second. To the second interrogatory he saith: "In the month of May, 1868, I was a messenger for the same company between Louisville and Nashville, and I had been acting in that capacity prior to that for about four years; my official duties as such messenger was to receive from local agents all express matter, including money packages, receipt for the same, and deliver the same to the agents at the points for which they were destined, except that I delivered packages for Louisville and points north to the head office at Louisville, and packages for Nashville and points beyond and south of it to the head office at Nashville. I also, while acting in that capacity, received from the messenger on the Memphis branch of the Louisville and Nashville Railroad, the sealed iron safe used for holding and transporting the money packages which came off that branch for Louisville and other points beyond it."

Third. To the third interrogatory, he saith: "I do know of such a package as that described, viz., a sealed package marked to B. Seaman, New York, and also marked as containing ($12,050) twelve thousand and fifty in bonds. I know of it in this way. On the night of the 21st of May, 1868, when the train from Nashville en route for Louisville stopped at Bowling Green, Kentucky, I, as messenger of the said Express Company, received from A. P. Merriwether, then messenger for the same company between Bowling Green, Kentucky, and Memphis,
Tennessee, a sealed iron safe, locked and sealed with a lead and
88 wire seal, which safe was numbered '244,' (two hundred and forty-four,) and was delivered by me at the head office of the Adams Express Company in Louisville, to W. R. Shelby, who was the night clerk of said company. The train reached Louisville early in the morning of 22d May, 1868. Shelby, in my presence, opened the said iron safe, took from it the Clarksville money way-bill, a copy whereof is filed with said Merriwether's deposition, and took from it also the money packages which were in the safe. Shelby receipted to me for the safe by putting opposite to the entry of the safe in my book the letter 'S,' and signing 'Shelby' at the bottom of the page, and I stood by him and saw him check off the money packages which he took out of the safe upon the Clarksville money way-bill. He checked them off on the way-bill by putting the letter 'S' opposite the description of each package on the way bill. I have seen his original check mark 'S' in said original way-bill, and I saw him make it, and hence I know that the package described in said way-bill as marked to B. Seaman, New York, $12,050 bonds, was received by him sealed, from the said safe."

Fourth. To the fourth interrogatory, he saith: "Said package was sealed when I saw it, which was when Shelby took it from said iron safe, as already stated by me. There were entries made of and concerning said package. When I received said iron safe from Merriwether, at Bowling Green, as already stated, I made the following entry upon my receipt book, viz.:

'Man. M. & L. R., 1 sealed safe, Lou., No. 244, Ad. Ex. Co.,' which meant that I had, as messenger aforesaid, on the day named at the top of the page where such entry appears, May 21, 1868, received from

Memphis and Louisville route one sealed safe, No. 244, of Adams Express Co. opposite said entry on my said book; said Shelby, when he received said safe, put the letter 'S' as his receipt for said safe.
89 I produce and annex hereto a correct copy of the page from my said book upon which said entry appears. It is an exact copy in every respect. I produce and annex hereto a correct copy of the said Clarksville money way-bill upon which, as already stated, Shelby checked off the said package and other packages therein described with the letter 'S,' which checking off was done in my presence."

Fifth. To the fifth interrogatory he saith: "I have already stated all that I know in reference to said package. I know that I received it from said Merriwether, as stated, because I received from him the said iron safe, sealed; and I saw Shelby take it from said safe. As already stated, I delivered said package to Shelby, clerk of the Adams Express Company, at Louisville, Kentucky. I cannot state the precise moment of delivery to Shelby, but it was early on the morning of May 22, 1868, within a half hour of the arrival of the train at Louisville, which arrival was about four o'clock a. m. I have already stated how and when said package left my possession. I do not know who locked the safe which contained it, but it was Merriwether's duty to do so, and it was locked when he delivered it to me. I do not know what became of the package after I delivered the safe containing it to Shelby, but I know that such packages were always put in the iron vault in the Louisville office. I left the office as soon as I found that the packages taken from the iron safe corresponded with the money way-bill."

Sixth. To the sixth interrogatory he saith: "I produce and annex hereto, marked 'A. F. T.,' the original leaf, cut by me from my said receipt-book, already referred to, upon which will be found the entry already referred to in reference to said iron safe, and a copy of which I have already produced and annexed hereto, marked A A A. I will also mark B B B, the copy heretofore annexed, of the money way-
90 bill from Clarksville, already referred to by me. I state further, that the iron safe aforesaid was delivered by me to Shelby, in the precise condition it was when delivered to me by Merriwether. It was sealed when I received it, and the seal remained unbroken until the delivery to Shelby. The safe could not have been opened except by breaking the seal. I should have stated heretofore that there were two keys of that safe, No. 244; one was kept by the express agent, at Bowling Green, and the other at the office at Louisville. He knoweth nothing further."

First. To the first cross-interrogatory he saith: "I have given my means of knowledge in my answers to the interrogatories."

Second. To the second cross-interrogatory he saith: "In my answers to the interrogatories I have stated when, where and in whose custody I last saw said package. I do not know what became of said package after Shelby received it."

And further saith not.

A. F. TALBOTT.

A. M. RUTER, of the city of Louisville, county of Jefferson, State of Kentucky; occupation, money way-bill clerk in the office of the Adams Express Company, and also money receiving clerk in the same company; aged thirty-three years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, William B. Dinsmore, president of the Adams Express Company, doth depose and say as follows:

First. To the first interrogrtory he saith: "My name is A. M.
91 Ruter; my age is thirty-three years and upwards; my residence in the city of Louisville, State of Kentucky, and my occupation at this time is money way-bill clerk, the money receiving clerk in the office of the Adams Express Company, in the city of Louisvile, Kentucky."

Second. To the second interrogatory he saith: "I was in the employment of the Adams Express Company in May, 1868, as money way-bill clerk in the office of said company at Louisville, Kentucky, and had been in the same employment for that company for many years prior to May, 1868, say for at least five years. My official duties as money way-bill clerk was to receive all money and valuable packages from the money-check clerk, in the office at Louisville, and way-bill them to the proper points. It was my duty, also, to receipt to the money-check clerk for all packages received from him, which I did on the face of the book kept by the money-check clerk by endorsing or putting the letter 'R' opposite each article."

Third. To the third interrogatory he saith: "I do know of a sealed package, said to contain $12,050 bonds, shipped from Clarksville, Tennessee, to B. Seaman, New York, on the 21st May, 1868. I know of it in this way: On the 22d day of May, 1868, I, as money way-bill clerk in the office of the Adams Express Company, at Louisville, received from W. R. Shelby, money-check clerk in said office, various money-packages which had come to Louisville by the train of the Louisville and Nashville Railroad, which had reached Louisville early on the morning of that day. Among those received from him was a sealed package, marked $12,050.00 bonds, B. Seaman, New York, which had come from Clarksville. I put my check-mark 'R' on the receipt-book kept by Shelby, which receipt-book is now before me, and I recognize the said check-mark as having been made by me. In said receipt-book of Shelby said package is thus described: '$12,050.00 bonds, Clarks-
92 ville, 21, B. Seaman, R., New York, N. Y.' The 'R' in said entry is the check-mark made by me as above. I would not have made such check-mark had I not received the said package sealed. On the 22d May, 1868, I made up the money way-bill for New York City. I have now before me the original money impression and copying-book, sometimes called money way-bill book, on which I copied, or took an impression, of all money way-bills made out by me. The money way-bills were made out upon printed blanks, and only so much of them appear in said copying-book as were in writing. Recurring to the said copying-book, I find a copy of the said money way-bill of May 22d, 1868, and there is in the same this entry, viz:

'1 Pa. H, 12.050.00, Clarks., B. Seaman.—P'd 18.10.'

The 'H' appearing in said entry between the words '1 Pa.' and the figures '12,050.00' is the check-mark of Thomas G. Harkins, messenger of the Adams Express Company on the route between Louisville and Seymour, Indiana, and to whom I delivered the packages specified in said money way-bill in New York City, including the above package of $12,050.00 bonds to B. Seaman, New York, N. Y. I know that I had that package, from the fact that I made said entry in said money way-bill about it, and from the further fact that the check-mark 'H' of Harkins shows that I delivered such package to him."

Fourth. To the fourth interrogatory he saith: "I know that such package, marked to B. Seaman, New York, and purporting to contain $12,050.00 in bonds, was sealed, because I would not have received it from Shelby had it not been sealed, or had it exhibited any appearance

of having been unsealed after it had been originally sealed. My orders would not have allowed me to receive unsealed packages from the money-check clerk. I know it was sealed when I received it from Shelby, and while it was in my possession, and when I delivered
93 it to Harkins, because, had it not been sealed Harkins would not have received it, and some entry of the fact would have been made. Entries were made in reference to said package by myself and others, as already stated, in answer to the third interrogatory. I produce and annex hereto a correct copy, marked A. M. R., of the page in W. R. Shelby's receipt-book, which shows the packages on the Clarksville way-bill of May 21, 1868. The check-mark 'R,' wherever it appears, was made by me. I produce and annex hereto also a copy of the money way-bill, made out by me, of packages destined for New York City, on the 22d May, 1868, which copy is taken from the said copying or impression book, referred to in answer to former interrogatory. As already stated, the copy in said impression-book does not show the printed words in the original way-bill, but the copy here annexed gives or shows the original money way-bill just as it was, including the printed and written matter thereon. Said copy is marked A. M. R. I will file, in answer to a subsequent interrogatory, the leaf taken from the impression-book aforesaid, which will show precisely what portion of the original money way-bill, made out by me, appears in said impression or copying-book."

Fifth. To the fifth interrogatory he saith: "In addition to what I have already stated, I state that after I made out the money way-bill for New York, of May 22, 1868, which was done as soon as I received the packages from Shelby as aforesaid, I put the packages back into the vault at the office in Louisville and locked the vault, and there the packages remained until about six or seven o'clock p. m. in the evening, at which time it became necessary to prepare them for delivery to Harkins. I say six or seven o'clock p. m. of May 22, 1868, not that I can remember the precise hour of that day, but that was the usual hour for attention to such matters, the object being to deliver New
94 York packages to Harkins in time to enable him to cross the Ohio River with them to Jeffersonville, Indiana, and put them on the night train of the Jeffersonville and Indianapolis R. R., which left at 9.30 p. m. of May 22, 1868. At about six or seven o'clock p. m. of that day, at the office of the Adams Express Company, in Louisville, Ky., I took from the vault the packages described in said money way-bill, marked A. M. R. 1, and in connection with Harkins I compared the address on each with the description in said way-bill, and as they were compared and found to be correct, Harkins checked each package on said way-bill with the letter 'H' to the left of the money value of each package. The packages thus checked were there (both Harkins and I being present and doing it) put into a canvass bag or pouch, which, in the presence of Harkins, I sealed with a lead and wire seal. The pouch was there put into an iron safe, which was used between Louisville and Cincinnati for all money and valuable packages destined for Cincinnati and points east and beyond that. This safe was sealed with a lead and wire seal, after being first locked, and there delivered to Harkins at the office of the Express Company in Louisville. There was no key to the pouch. To the safe containing it there were only two keys, one of which was kept in the Express Office at Louisville in the vault, and the other in the office at Cincinnati. Harkins had no key to the safe. Neither the pouch or safe could have been entered without breaking the seal on each, nor could the safe have been entered except with one of the keys

aforesaid, unless it was broken open or blown up. I know that the package marked to Seaman, as well as the other packages described in the money way-bill of May 22, 1868, for New York, were delivered to Harkins on May 22, 1868, because his check mark 'H' on said way-bill shows it. He never put said check mark on a way-bill unless he himself saw the package and received the package thus checked. I know he received said bag or pouch on the 22d May, 1868, because, besides the check mark on the money way-bill, I took from Harkins a
95 receipt for said bag, which receipt was given by Harkins himself putting his name on the receipt, thus—'Harkins.' That receipt was copied into said impression or copying book, and I herewith produce and annex hereto a copy of said receipt, as it appeared before the impression of it was taken, and marked A. M. R. 2, and also the original receipt as it appears in said impression book, and which is cut from said impression book, and is marked A. M. R. 3. I know that Harkins received the said iron safe, which was numbered 102, because I took from him a receipt for the safe. I produce and annex hereto, marked A. M. R. 4, a copy of said original receipt for the safe, and also marked A. M. R. 5, the copy of said receipt for the safe cut from said impression book into which it was copied. I produce and annex hereto, marked A. M. R. 6, the copy of said money way-bill cut from said impression book. I recognize the check mark 'H' in said impression copy as the genuine 'H' of Harkins, and also the word 'Harkins' as it appears in the impression copies of the receipts for the bag and safe as the genuine handwriting of Harkins, whose handwriting I know well, having seen him frequently write. The figures and letters, '9.30 p. m.' on the money way-bill was indicative of the hour at which the train would leave Jeffersonville which would carry said packages therein described, and I make the same remark as to the same letters and figures on the receipts for the bag and safe. The official duties of Harkins were to receive all express matter to be shipped on his route, receipt for same, and to deliver the same, with the safe containing it, to the proper agent or messenger at the end of his route. I cannot be mistaken as to the fact that I received the package marked $12,050.00 bonds, B. Seaman, New York, from said Shelby, on the 22d May, 1868, or that it was sealed and had not been opened when I received it, or that it remained in the vault of the office at Louisville until I delivered it to said Harkins on the evening of May 22d, 1868, sealed, and in a pouch or bag sealed, which
96 pouch or bag was in an iron safe, which was itself locked and sealed when I delivered it to Harkins. I do not know what became of the package, pouch, or safe after they were taken by Harkins to be put on the train at Jeffersonville. The pouch and safe never came back to the Louisville office."

Sixth. To the sixth interrogatory he saith: "He knoweth not, beyond what has been already stated, except that it was impossible for said package to have been opened prior to its arrival at Louisville, because had it been, there would have been indications about it which would have attracted my attention. And it was equally impossible that it could have been opened while at Louisville and prior to the delivery at Harkins, because when delivered to Harkins it was in the precise condition that it was in when it reached Louisville."

First. To the first cross-interrogatory he saith not: "My answers to interrogatories show all the means of my knowledge."

Second. To the second cross-interrogatory he saith: "My answers to interrogatories show when, and in whose custody I last saw said package, and what became of it so far as I know."

A. M. RUTER.

THOMAS G. HARKINS, of Lexington, Fayette County, Kentucky, occupation United States store-keeper, aged thirty-seven years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz.:

97 First. To the first interrogatory he saith: "My name is Thomas G. Harkins; my age thirty-seven years and upwards; my residence is in the city of Lexington, State of Kentucky, and my occupation is that of United States store-keeper under the internal-revenue law."

Second. To the second interrogatory he saith: "I was in the employment of the Adams Express Company in the month of May, 1868, in the capacity of messenger from and between Louisville, Kentucky, and Seymour, Indiana. I had been in that position for three months continuously before May, 1868, but prior to being put in that position I had been messenger of the same company on other lines for one or one and a half years. My duty as messenger between Louisville and Seymour was to receive at the office of the said express company in Louisville all express matter which was to go over my said route, receipt for it to the proper person, take it across the Ohio River and transport it from Jeffersonville, Indiana, to Seymour, on the cars of the Jeffersonville, Madison and Indianapolis Railroad Company. When I reached Seymour my duty was to deliver all express matter to the agents of the express company for the different routes east, west, and north; I had the same duties to perform on my return to Louisville from Seymour, except that I delivered all express matter destined for Louisville and points South, to the proper person at the office at Louisville. One remark already made may cause me to be misapprehended, and I therefore say that when I reached Seymour my duty was to deliver express matter to the local agent at Seymour, by whom it was delivered to the messengers on the different trains leaving there, I taking a receipt from the Seymour agent for all delived to him."

Third. To the third interrogatory he saith: "I do know of a certain sealed package said to contain ($12,050) twelve thousand and fifty dollars in bonds, shipped from Clarksville, Tennessee, to B. Seaman,

98 New York, on the 21st May, 1868. My knowledge was acquired in this wise: On the 22d May, 1868, I and A. M. Ruter, money way-bill clerk in the office of the Adams Express Company at Louisville, deposited in a canvass bag or pouch various money packages, all sealed, marked New York City, and for different persons at that place, among which packages was a sealed package marked B. Seaman, New York, and marked as containing $12,050 bonds. I speak with certainty as to these facts because I have now before me the exhibit marked A. M. R. 6, and filed with said A. M. Ruter's deposition, which I recognize as a leaf taken from the copying book in which were taken impression copies of all money way-bills made out at the office at Louisville. I know that I received on the 22d May, 1868, all the packages described in said money way-bill, including a package marked as aforesaid to B. Seaman, New York, and as containing $12,050 bonds. The original of said way-bill was made out by said Ruter, whose duty it was to do so, and I know that he made out the one in question, because I have seen him write frequently, know his handwriting well, and know that said impression copy is a literal copy of the original. The 'H' which appears in said impression copy to the left of the figures, indicating the value of each package, I recognize as my own 'H,' which I made on the original way-bill from which said impression copy was taken. The usual time in the day for me to receive said express matter was about 6 p. m.; when I came to

the Louisville office to receive it, I took the money way-bill, as my invariable habit was, and called each package off, as therein described, and in connection with Ruter would and did carefully examine each package, and compare it with the money way-bill. If found correct and in proper order, I would put the package thus compared and examined into a canvass bag or pouch, and check the same off with the letter 'H.' This was done in reference to each package described in said money way-
99 bill, because had it not been I would not have put my check-marks on the way-bill as stated. I was always very particular in these examinations and checkings, because the check marks I made were receipts against me that I had received the package thus checked off. After the money way-bill was thus compared throughout with the packages, the latter being put in said bag, the bag was sealed by Ruter in my presence, with a lead and wire seal, which would have to be broken before any one could enter the bag. I make said original impression copy filed with Ruter's deposition, marked A. M. R. 6, part of this deposition, and put my name thereon; I know it to be a correct copy; I know that I received said bag sealed, because I have before me the original impression copy of the manifest for the same; it is marked A. M. R. 3, and is filed with Ruter's deposition, is made part hereof, and I have marked my name thereon; the name 'Harkins,' which appears therein to the left of the words 'Adams Ex. Co.,' I recognize as my genuine handwriting, or rather it is a literal copy of the word 'Harkins,' as written by me in the original manifest, from which said impression copy was taken. I would not have so endorsed the original had I not received said bag or pouch sealed. The bag after being sealed was put by Ruter in an iron safe, which he, in my presence, sealed with a lead and wire seal, and then locked it. When I say that I received the bag sealed, I mean that I received it in the said sealed and locked iron safe, and know that it was sealed as stated before being put in the safe; I know that I received the safe sealed and locked, because I have before me the original impression copy of the manifest of said safe, on which I recognize the name 'Harkins,' written by me on the original to the left of the words 'Adams Ex. Co.' Had I not received the safe sealed and locked I would not have so endorsed said manifest, for said endorsement on said manifest was my receipt therefor. Said copy is marked A. M. R. 5, is filed with Ruter's deposition, and is made part hereof, being
100 marked also with my name. I know that I received said bag and safe containing said package, on May 22, 1868, by reference to said impression copies. The original money way-bill aforesaid was put by Ruter, in my presence, in said bag before it was sealed; the original manifest of the bag was put in said iron safe before being sealed and locked, while the original manifest of the safe was delivered to me."

Fourth. To the fourth interrogatory he saith: "In addition to what is already said, I state that the only entries made by me in reference to said package were made on said original way-bill and manifests for said bag and safe, the character of which entries are indicated in said original impression copies already referred to. I also refer to and make part hereof the Exhibits A. M. R. 1, A. M. R. 2, and A. M. R. 4, referred to in A. M. Ruter's deposition. I have marked my name on each, make them part hereof, and state that they are correct copies of the said original way-bill and manifests of bag and iron safe before the impression copies were taken. The originals were on printed blanks, and the impression copies only show the written portions of the originals."

Fifth. To the fifth interrogatory he saith: "When I received said iron safe containing said sealed bag and packages from A. M. Ruter, at the

office of the Adams Express Company at Louisville, Kentucky, I took it across the Ohio River to the depot of the Jefferson, Madison and Indianapolis Railroad in Jeffersonville, and put it in the express car destined for Seymour, Indiana. The train left on time that night, to wit, 9.30 p. m., on the night of May 22, 1868. I went with the express car, having charge of said iron safe. From the time I received it I was never away from it or separated from it one moment until the train that night, between 11 and 12 p. m., reached Marshfield water-tank, about 40 miles north of Jeffersonville, at which place the train stopped to obtain
101 a supply of water for the engine. It had stopped a moment, when there was a sudden jerk in the express car, and a movement forward of such a character as to surprise me. I was then sitting on the said sealed iron safe, which was numbered 102, and rose up to see what was the matter. Just as I got up, I heard the firing of pistols around the car, and I observed that the engine and express car had been detached from the train and was moving forward. Just then some men broke into the express car, through the rear door, and at the same time I heard some persons breaking through the front door. The persons who came into the rear door, or some of them, struck me on the head a heavy blow which felled me to the floor, and I became wholly insensible from the blow. What next occurred I do not know, for I have no recollection of anything that occurred afterwards, and I remained unconscious until the succeeding Monday, when I found myself at my home in Louisville. How I got to Louisville I did not at the time know, and now only know it from what others told me afterwards. I was carried to my home, as these persons told me, by agents of the Adams Express, who came out to the said tank. After said attack I never saw said safe, or any of its contents, nor do I know what has become of either. There was no key to the bag; it was sealed as stated; I had no key to the safe. There were but two keys for it; one was kept at the office of the Adams Express Company in Louisville, in the vault, and the other in the office of the company at Cincinnati. The said iron safe was used by said company between Louisville and Cincinnati."

Sixth. To the sixth interrogatory he saith: "The night of said attack was quite dark. I had for use on my said route an iron safe for local business, of which I kept the key. It was in this last-named safe I put the original manifest of said sealed iron safe. No. 102. What became of it I do not know, for I remember nothing after said attack until
102 the Monday succeeding. Had said sealed package containing said $12,050 bonds, marked to B. Seaman, been opened or tampered with at any time prior to the time when I checked off on said money way-bill and put it in said safe, I would have observed it, for I was very particular and careful to examine all packages carefully before receiving them; such were my orders. I never would have received either an unsealed money-package or a suspicious-looking one. Neither said sealed iron safe or said sealed bag could have been entered without breaking the seal, nor could said package. It was impossible for said safe to have been entered after I received it and prior to said attack. All original money way-bills made at the Louisville office were copied into said impression book."

First. To the first cross-interrogatory he saith: "My answers to the direct interrogatories show my means of knowledge."

Second. To the second cross-interrogatory he saith: "My answers to the direct interrogatories show when, where, and in whose custody said package last was, and what has become of it so far as I know."

T. G. HARKINS.

WILLIAM R. SHELBY, residence Pittsburg, Pennsylvania, secretary of railroad company my occupation, aged twenty-seven years and upwards, being duly and publicly sworn, pursuant to the directions annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory he saith: "My name is William R. Shelby; my residence is Pittsburg, Pennsylvania, and my occupation is secretary and treasurer of the Continental Improvement Company of Pennsylvania."

103 Second. To the second interrogatory he saith: "I was in the employment of the Adams Express Company in the month of May, 1868; I had been in such employment about twelve months prior to that date. The position which I held was that of money-check clerk. My duties as such clerk were to receive money or valuable packages from the route-messengers, and receipt for them to such messengers. The manner in which I gave such receipts was by putting my check-mark on the recept-book kept by such messengers. My check-mark was 'S.' My duty was also to receive and receipt for iron or sealed safes containing valuables or money; I would receipt for them in the same way. When an iron sealed safe came to the office at Louisville—at which office were my duties exclusively—it was opened by me, there being a key for it kept in the vault of the office; in the safe I would find a way-bill of the packages in the safe, which packages would be compared with the way-bill, and if found all right, that is if sealed and in good order, and answering to the description on the way-bill, I would then enter them all in the receipt-book kept my me, and pass them over to the money way-bill clerk, who, at that time, was A. M. Ruter, taking from said Ruter a receipt therefor. He gave his receipt by putting his check-mark, 'R,' opposite each package in said receipt-book; that would end my connection with the packages."

Third. To the third interrogatory he saith: "I do know of such a package as that described in the third interrogatory, and I know of it in this way: on the morning of the 22d May, 1868, I received from A. F. Talbott, messenger for the Adams Express Company on the route between Louisville and Nashville, iron safe, sealed No. 244. This I know, because I have examined the original receipt given by me to Talbott for that safe; that original recept is to be found on Exhibit 'A. F. T.,' filed with and made part of the deposition of A. F. Talbott. I

104 have put my name thereon to identify it, and I make it a part of my deposition. The deposition of Talbott I refer to is his deposition taken before John M. Harlan, commissioner in this case, on the 8th day of December, 1869. The receipt I refer to as having given for that safe is my check 'S,' on the leaf taken from A. F. Talbott's receipt-book, which is the Exhibit 'A. F. T.,' above referred to. The check-mark 'S,' opposite each package or article described on Exhibit 'A. F. T.,' as well as the name 'Shelby,' thereon, I recognize as my genuine writing. I would not have made such check-marks had I not received in proper condition each article or package described in said Exhibit 'A. F. T.' The entry on said exhibit of 'M. & L. Rt., 1 sealed safe, No. 244, Ad. Ex. Co., Lou., 5,' means that I received from said Talbott 1 sealed iron safe, No. 244, belonging to the Adams Express Company, and which was used for the Memphis and Louisiana route. I know that said safe was sealed, because it was the order of the company always to seal it; and had it not been sealed when it was delivered to me I would have observed it, and would not have received it all. When I received the safe I broke the seal, and unlocked the safe with a key

kept in the vault of the Louisville office, and took therefrom the money way-bills which were therein; among others, the money way-bill made up at Clarksville on the 21st May, 1868; this I know, because I have examined the original way-bill of that date, and I find my check-mark 'S' on it opposite each package. The packages in the iron safe corresponded precisely with the description on the way-bill, otherwise I would not have put my check-mark 'S' on the way-bill; or to be more exact, if I had failed to find in the safe any package described on the way-bill I would have declined to check it. As I found every package checked off on the money way-bill from Clarksville of May 21, 1868, I know that I received each package. I know that I received the Clarksville packages in said sealed iron safe, because that was the only way in
105 which they could reach me. The iron safe referred to was sealed and locked at Bowling Green, Kentucky, because there was no key of it, beside the one kept at Louisville, except the one kept in the office of the company at Bowling Green. Among the packages taken by me out of said sealed iron safe was one sealed package from Clarksville, Tennessee, marked to B. Seaman, New York, and as containing ($12,050) twelve thousand and fifty dollars in bonds. This package, with others received as aforesaid by me, I delivered to said A. M. Ruter, who receipted to me therefor by putting his check-mark 'R,' opposite same in my receipt-book, which is now before me."

Fourth. To the fourth interrogatory he saith: "In addition to what I have already said, I state that the package referred to was sealed, because, had it not been, I would not have received and receipted for it. I had orders not to receive or receipt for any package of value unless it was sealed, or if it exhibited any evidences whatever that it had been tampered with in any way. All the packages checked off on the Clarksville way-bill were in proper order when I took them from that safe. I did make certain entries of and concerning said package. I have already made part of this deposition the Exhibit A. F. T., filed with Talbott's deposition, upon which will be found my original check-mark for the sealed iron safe, No. 244, which contained said package. I also mark with my name, and make part hereof, a correct copy of the page in said Talbott's receipt-book, whereon appears my said check-mark for said iron safe, said copy being Exhibit 'A. A.,' filed with said Talbott's deposition. I also mark with name, and make part hereof, a correct copy of the Clarksville money way-bills, (being Exhibit 'B. B. B.,' in said Talbott's deposition,) upon which was entered said package,
106 marked to B. Seaman, New York, and as containing $12,050.00 in bonds, and on which, also, was made my original check-mark, 'S,' to the right of the amounts or value of each package, and which check-mark was made as soon as I opened said iron safe and compared address on the package therein found with the description in the way-bill. Said check, marked S, is my genuine hand-writing. I make part hereof, also, a correct copy of the entries made in the receipt-book I kept of the packages turned over by me to said A. M. Ruter, money way-bill clerk, and which came from Clarksville, Tennessee, by the Memphis local of May 21, 1868, which reached Louisville on the morning of May 22d, 1868. Said copy last described is Exhibit A. M. R., filed with said Ruter's deposition, and I mark my name thereon and make it part hereof. The check-mark, 'R,' on the original is the original genuine check-mark of said Ruter, which I recognize, having seen him write frequently, and said check means that I delivered to him, as money way-bill clerk, the package thereon described. I put my name on said Exhibit A. M. R. and make it part hereof."

Fifth. To the fifth interrogatory he saith: "I have already answered this interrogatory quite fully; and, in addition, I state that I delivered said package to said Ruter, on the morning of May 22, 1868. The train usually reached Louisville about 4 o'clock a. m., and I received the safe containing said package within one-half hour after arrival. I usually concluded my duty in regard to the safe and contents between 7 a. m. and 9 a. m. the same morning, when I delivered contents to Ruter, obtaining his receipt or check-mark therefor, as already stated. Ruter's duty was to put the packages for points north in the vault, and they would remain there until the time came for him to deliver them to the next messenger going north. That messenger at that time was T. G. Harkins. I
107 have examined Exhibits A. M. R. 3, A. M. R. 5, and A. M. R. 6, filed with Ruter's deposition, and I recognize the check-mark, H, on each of them, as an exact impression copy of the genuine handwriting of Harkins, whose hand-writing I know well, having seen him write frequently. I did not put the package in any safe myself. I received it, as already stated, in a sealed and locked iron safe, No. 244, used on the Louisville and Nashville Railroad for express matter coming on the Memphis branch. I have stated why and how I know that that package came in that safe and was received by me. Of that safe there were but two keys—one was kept by the agent at Bowling Green, and the other key was kept by me in the vault of the Adams Express Co., in Louisville. Said safe, when it reached the Louisville office, was sealed with a lead and wire seal. I do not remember any instance in which the duties of the various offices of the company were not discharged in the manner already indicated. Each clerk and messenger were checks upon others, so that any package could be traced."

Sixth. To the sixth interrogatory, he saith: "He knoweth not, unless it be that, had the package marked to Seaman, as aforesaid, been disturbed, or the seal broken, or the safe, 244, in which it came to me, been opened after it had been locked and sealed at Bowling Green, I would have discovered the fact, and would not have receipted either for the safe or package."

First. To the first cross-interrogatory he saith: "I have stated all my means of knowledge as to the matters testified to, in the answer to the third and other interrogatories."

Second. To the second cross-interrogatory he saith: "My answers to the direct interrogatories state when, where, and in whose custody I last saw said package, and what became of it so far as I know."

W. R. SHELBY.

108 N. Y. Common Pleas.

WILLIAM B. DINSMORE, PRESIDENT OF THE Adams Express Company,
against
WILLIAM B. DUNCAN ET AL.

Interrogatories to be administered to the witnesses hereinafter named by John M. Harlan, esq., of Louisville, Kentucky, commissioner under and pursuant to a commission heretofore issued in this action to the said John M. Harlan for the examination of other witnesses on behalf of the plaintiff herein.

To S. A. Jones, L. H. Hoffman and A. Wheden:

First interrogatory. What is you name, age, residence, and occupation?

Second interrogatory. By whom were you employed in the month of May, 1868, in what capacity were you so employed, how long had you been in such employment, and what were your official duies? State fully and particularly.

Third interrogatory. Were you present at, and did you witness any attack made upon a train on the Jefferson, Madison and Indianapolis Railroad on the night of the 22d of May, 1868? If yea, then state at what place and hour such attack was made, and whether it was
109 directed against any particular car or cars on said train, and if so, against what car or cars. State fully and particularly all the circumstances relating to such attack, the part which you took with reference to resistance to said attack; and state also whether any and what resistance was made, and by whom, and what was the result of such attack.

Fourth interrogatory. State whether there were any express matter and safes belonging to the Adams Express Company on said train, and whether they were in the car or cars attacked; what your means of knowledge are as to the Adams Express matter and safes on said train; what were the numbers on the safes on board the train, and what became of the express matter and safes during and after the attack.

Fifth interrogatory. If in answer to the last preceding interrogatory you shall have stated that any safe or safes of the said Adams Express Company were broken open during said attack, state now by whom they were broken open, if you know, what were the numbers on each safe so broken open, in what manner they were broken open, and what became of the contents thereof.

Sixth interrogatory. Did you see the safe or safes after the attack on the train; and what was their condition when you saw them? Did you ever see the contents of said safe or safes after said attack? If you did not see said contents afterwards, did you make any efforts, and if so what, to ascertain what became of said contents, and with what result? State fully and particularly everything that came under your own observation with reference to the breaking open of the said safe or safes and the abstraction of the contents thereof; and state also the source whence you derived the information you have given in your answers to this and the previous interrogatories.

Seventh interrogatory. Do you know any other matter or
110 thing which may tend to the benefit or advantage of the plaintiff herein? If yea, declare the same as fully and at large as if you had been particularly interrogated thereunto.

BLATCHFORD, SEWARD & GRISWOLD,
Plaintiff's Attorneys, No. 29 Nassau Street.

Cross-interrogatories are hereby waived.
New York, January 21st, 1870.

BOWDOIN, LAROCQUE & BARLOW,
Att'ys for Def'ts.

Deposition of witnesses produced, sworn, and examined the 27th and 29th days of January, in the year one thousand eight hundred and seventy, at Louisville in the State of Kentucky, under and by virtue of a commission issued out of the court of common pleas for the city and county of New York, in a certain cause therein depending, and at issue, between William B. Dinsmore, president of the Adams Express Company, plaintiff, and William B. Duncan, David Duncan, William Watts Sherman, and Francis H. Grain, defendants, as follows:

S. A. JONES, of Columbus, Ohio, occupation, general agent of the

Adams Express Company for Kentucky, aged fifty-one years, and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the said plaintiff, doth depose and say, in answer to the interrogatories hereto annexed and propounded to him, S. H. Hoffman and A. Wheden, as follows, viz:

First. To the first interrogatory he saith: "My name is S. A. Jones; aged fifty-one and upwards; residence, Columbus, Ohio; and occupation, general agent of the Adams Express Company for the State of Kentucky, and on the Ohio River as far down as Cairo, Illinois."

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Second. To the second interrogatory he saith: "I was in the employment of the said express company in May, 1868, in the capacity indicated in the answer to the first interrogatory, and I have been in such employment since 1851; as such general agent I had the general superintendence and control over all the business and agents of the Adams Express Company in Kentucky and on the Ohio River, from Cincinnati to Cairo, Illinois."

Third. To the third interrogatory he saith: "I was present at an attack on the Jeffersonville, (not Jefferson) Madison and Indianapolis Railroad, on the night of the 22d May, 1868; I did not witness the attack, but heard the report of pistols, and saw some of the results of the attack. I will state all the circumstances, so far as they came within my observation. I left Jeffersonville, Indiana, about 9.30 p. m. on the night of May 22d, 1868, on the above road, for Cincinnati via Seymour, Indiana, on official business connected with the express company. After the train of cars reached Marshfield water-tank, about thirty miles north of Jeffersonville, and after the train had come to halt, say for 5 or 10 minutes, there was something like a jerk in the cars in front of me. I was in the front passenger-car, the next car ahead of me being the baggage-car, and the next ahead of that and behind the engine was the Adams Express Company car. As soon as I felt the jerk referred to I got up, went to the front door of the car I was in, and just as I reached the door and opened it, I heard ahead of me a pistol shot, and immediately afterwards two other shots, in quick succession. I got down on the ground instantly, and I observed moving off ahead of me on the rail-track, in the direction of Seymour, the engine which drew the train upon which I came from Jeffersonville, and having one car behind it—the Adams Express Company car; it was going off at a rapid rate. I went to the head of so much of the train as remained, and I there saw the conductor, A. Wheden, and immediately there came up to us the engineer. From them I learned that some six men, unknown to them, had jumped upon the train while it was standing on the water-tank, two on the engine and four on the express car, two at each end, had detached the engine and the express car from the other cars; had driven the engineer from it while oiling his engine, and had gone off up the road on the engine and express car. We immediately started up the road toward Seymour, to the next telegraph station, six miles off—that is, the conductor, engineer, fireman, and myself. We had gone only a few yards from the cars when I stumbled over something near the rail-track; it was a dark, cloudy night, about 11½ or 11 o'clock; I saw it was a man. A light being obtained, I found it to be the express agent, T. G. Harkins, who ran from Louisville to Seymour and back; he was lying just outside of the main track, between it and the side track. He was insensible, though breathing. We moved him to the cars, and then went ahead to the telegraph station at Carothersville; there I telegraphed to Jeffersonville, Indiana, to

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send out an engine, and telegraphed to Seymour to know whether that engine and express car had arrived there. The reply was, that they saw the head-light of an engine on the track below Seymour. I telegraphed back to go down for it. When the engine came out from Jeffersonville about an hour afterwards, we got on the train and went up to Seymour. We there found the engine and express car which had been taken off; no safes in either. The boxes of goods which were in the express car had been broken open and contents scattered around in the car. With Hoffman and a policeman of Seymour, I came back on the road and found where the engine and express car had been left. We there saw
113 the tracks of six men, leading off from the rail-track across a corn-field towards a dirt road which runs through Seymour. They were evidently fresh tracks, and it was evident from the impressions in the ground, near the rail-track, that those persons had jumped from the car and engine. We followed those tracks up to where the Ohio and Mississippi Railroad crosses through Seymour, and they could not be distinguished beyond that. About 9 o'clock a. m. of the 23rd inst., Hoffman, with some others, took a hand-car and went down the road again to hunt for the express safes, and he returned the same morning with the express 'through' safe, No. 102. It had been broken open; the door of it was off. It had evidently been bursted open, or opened with a chisel; we found in the express car some chisels or iron wedges, which had doubtless been used to open the safe. These are all the circumstances I remember in connection with said attack. I know nothing of the character of resistance made to such attack further than stated."

Fourth. To the fourth interrogatory he saith: "I have no personal knowledge as to what express matter was on that train, or what safes, except that I saw said 'through' safe, No. 102, at the time stated in answer to last interrogatory. I know that that safe, 102, was a 'through' safe used to carry money packages from Louisville to Cincinnati; it was always, when leaving Louisville, locked and sealed with an iron wire seal, and there were only two keys of it, one kept in the Louisville office, and the other at Cincinnati. My duties did not require me to be advised of the particular contents in said safes or as to the particular express matter on any particular train. There was another safe, doubtless, on that train when attacked, called a messenger's safe, for way business. I saw such a safe on the express-car when it left Jeffersonville, Indiana,
114 the night of 22d May, 1868, but it contained no money except for way points and Seymour, and was numbered 161. I do not personally know what became of that safe. Harkins was sent to Louisville on the next morning by the train for Louisville; I had him brought to Seymour on the night of the 22d inst.; I saw him last about 10 o'clock a. m. of the 23d inst., and he was still insensible; he had received a blow on the back of his head."

Fifth. To the fifth interrogatory he saith: "I do not know who broke open the safes. I have given the number of the safes, and stated, so far as I could, how they were broken open; I do not know what became of the contents; there were no contents in safe 102 when I saw it; it was empty."

Sixth. To the sixth interrogatory he saith: "I have answered this interrogatory as fully as I can, in my answers to the former interrogatories."

Seventh. To the seventh interrogatory he saith: "I know of nothing else material to the plaintiff, beyond what I have stated, unless it be that A. F. Talbott, W. R. R. Shelby, A. M. Ruter, Thomas G. Harkins,

and A. P. Merriwether, who have given their depositions in this action, are all men of undoubted veracity, unimpeachable integrity, and of capital business qualifications."

S. A. JONES.

S. H. HUFFMAN, of Lexington, State of Kentucky, occupation, local agent of the Adams Express Company, aged thirty-five years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, William B. Dinsmore, president of the Adams Express Company, doth depose and say, in answer to the interrogatories propounded to S. A. Jones, said Huffman and A. Wheden, as follows, namely:

115 First. To the first interrogatory he saith: "My name is S. H. Huffman, and I am the same person referred to in the commission and interrogatories as L. H. Hoffman. My age is thirty-five and upwards. My residence is Lexington, Ky., and my occupation is that of agent for the Adams Express Company, at Lexington, Kentucky."

Second. To the second interrogatory he saith: "I was in the employment of the Adams Express Company in May, 1868, in the capacity of local agent, at Seymour, Indiana. I had been, prior to that date, such local agent since April, 1863. My official duties as such agent were receiving and delivering all express for Seymour, forwarding all express-matter destined for points east, north, west, and south of that place."

Third. To the third interrogatory he saith: "I did not witness any such attack as indicated in this interrogatory, and personally know nothing of the place or hour of such attack, or against what cars it was directed, or the circumstances attending any such attack, or what, if any, resistance was made to any such attack. I was at Seymour at the time such attack is said to have been made."

Fourth. To the fourth interrogatory he saith: "Early on the morning of May 23d, 1868, before daylight, I received a telegram from S. A. Jones, general agent of the Adams Express Company for Kentucky, stating that the train due at Seymour from Jeffersonville at 1 o'clock that night had been attacked, express-messenger robbed, and express-car, with engine, taken off by the robbers. This was the substance of it. I will not pretend to remember the precise words of the telegram. I was not at the Seymour depôt when the telegram came there. It was received by my brother, who was night-clerk in the office at Seymour. It was brought to my room, and when I got to the office I found

116 that the engine and express-car had been brought up to Seymour. I immediately went into the express-car, and found the safes were gone, and that the express packages and boxes had been broken open and cut open, and the contents scattered all around in the car. After looking at the car I went down the track about a mile, where I found six tracks of men which left the road, and which took across a ploughed field to a dirt road. This was about daylight. When the Indianapolis train came by, I got on it and came down the road further, where I found the through iron safe, 102, on the side of the road—east side—about one-half a mile south of Retreat Station, and about eleven miles from Seymour. It was lying about twenty-five or thirty feet from the rail-track. It had evidently been pitched from the train. When I found it it was broke open; the door was gone, and nothing was in it except a small steel wedge and some manifests and one or two way-bills. I found nothing around there which appeared to be connected with any train or express, or other car. I put the safe on the next train passing towards Seymour, and took it to Seymour, and from there sent it to Cin-

cinnati. This was on the 23d May, 1868. I know that that safe belonged to the Adams Express car, and was the safe which contained money for points beyond Seymour. I had frequently seen and handled the safe before that, and cannot be mistaken as to its number, or the purposes for which it was used. I have no personal knowledge that that safe was on the Adams Express car which left Jeffersonville on the night of May 22d, 1868; but I know that it ought to have been there, for it had been forwarded by me to Louisville from the Cincinnati train on the night before, and it should have been returned to Seymour the next night—that is, the night of May 22d, 1868. I do not know what became of the express matter on that train, further than I have stated. There was another safe called the local messenger's safe, used between Louisville and Seymour. I saw it after some one had found it
117 down the road on the 23d May, 1868. That safe never contained any money for points beyond Seymour, or for the East. All money sent from Louisville by express for Cincinnati and the eastern cities, was put in the iron safes used between Louisville and Cincinnati, which were always locked and sealed with an iron-wire seal; and of that safe there were but two keys, one of which was kept at Louisville and the other at the Cincinnati office. T. G. Harkins was the messenger between Louisville and Seymour, who had charge of the express matter which left Jeffersonville on the 9.30 p. m. train of the 22d May, 1868. He did not come to Seymour the night of May 22d, 1868, when I was there. I understood he was brought up there while I was down the road hunting the express safes. I was with Jones and a Seymour policeman or marshal on the morning of May 23d, 1868, and we traced those tracks of six men across the ploughed field until they reached the Ohio and Mississippi Railroad, where they were no longer traceable."

Fifth. To the fifth interrogatory he saith: "I do not know who broke open the safes, or in what manner they were broken, or what became of their contents. When I saw the local messenger's safe its contents were gone. The safe 102 looked as if it had been opened with a chisel or wedge of some sort."

Sixth. To the sixth interrogatory he saith: "My answer to the foregoing interrogatories contains my answer to this, so far as I can give any answer."

Seventh. To the seventh interrogatory he saith: "He knoweth not, except that the express matter, which was found in the express car at Seymour, was entirely dry goods and merchandise, and some books, clothing, and handkerchiefs—no money or valuables."

S. H. HUFFMAN.

118 A. WHEDEN, of Jeffersonville, Indiana; occupation conductor on the Jeffersonville, Indianapolis and Madison Railroad; aged twenty-nine years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, William B. Dinsmore, president of the Adams Express Company, doth depose and say, in answer to the interrogatories propounded to A. A. Jones, L. H. Hoffman, and A. Wheden, as follows, viz:

First. To the first interrogatory he saith: "My name is A. Wheden; age, twenty-nine and upwards; residence, Jeffersonville, Indiana; occupation, conductor on the Jeffersonville, Indianapolis and Madison Rrailroad."

Second. To the second interrogatory he saith: "I was employed in May, 1868, as conductor on the Jeffersonville, Indianapolis and Madison Railroad, running between Jeffersonville and Indianapolis, Indiana, and

had been in that position and employment since the latter part of 1865. My official duties were, as now, such as are discharged by all railroad conductors—to control and superintend the train under my charge."

Third. To the third interrogatory he saith: "On the night of the 22d May, 1868, I was the conductor on the train which left Jeffersonville, Indiana, at 9.30 p. m., or about that time, destined for Indianapolis. When the train reached Marshfield water-tank, thirty-one miles north of Jeffersonville, it stopped to have the tender supplied with water. The train had stopped but a moment, when the water-boy, who kept the passenger cars fired up, came into the rear passenger car, where I was sitting, and said that there were several men around the express car, who seemed to be after it. I went out out immediately; got down on the left of the train; walked towards the head of the train, and when I got within ten feet of the express car I observed a man in a position as if uncoupling the express car from the rear portion of the train, and instantly I heard the coupling pin fall as if
119 the cars were uncoupled. At the same time I observed another man cutting the bell-rope which ran through the train. I halloed at them, cursing them I believe; drew from vest-pocket a small revolver, fired at the man at the coupling pins, the man at the bell-rope firing at me just before I fired; the man at the coupling pin then fired at me, and I at him. I fired again at the two, and one of them shot back at me; and the engine and express car moved off up the road rapidly; from the time I got out of the car until the engine and express car moved off not more than a minute of time expired; it was all done quick enough to make a man's head swim nearly; while it was going on I saw nobody but myself and these robbers; but as the engine moved off, I observed the engineer getting away from the danger, running; immediately after that, S. A. Jones, the engineer, and myself started up the road after the engine and express car, and had gone about 150 yards when we stumbled over somebody on the side of the track, and a light being brought, we discovered it was T. G. Harkins, the express messenger on my train; he was lying at the side of the track, was insensible, and had evidently been pitched out of the car; Jones and I and the engineer had Harkins put into the remaining cars; then went up to 'Austin,' got a hand-car, and with that went up to Caruthersville, where there was a telegraphic post; from there we telegraphed to Jeffersonville for another engine; and also telegraphed to Seymour; got an answer from that place that an engine was in sight down the road and had been for some time; I then came back to the train at the water-tank; engine came out from Jeffersonville early next morning, and then I took the train to Seymour, reaching that place at about 4 or 5 in the morning, leaving Harkins at Seymour, and then went on to Indianapolis with train. These are all the circumstances that I now remember in connection with said attack."

120 Fourth. To the fourth interrogatory he saith: "There was express matter and express safes belonging to the Adams Express Company on said train, and they were in the express car which those robbers took off. I do not know the numbers of the safes on board the train, nor do I know personally what became of the express matter and safes, except that when I got to Seymour and came up with the express car and engine which had been detached at the Marshfield water-tank, I went in the express car and found that the express safes were gone, the doors and windows had been broken, and express boxes broken open and contents scattered all around in the car. The contents I refer to were dry goods and merchandise; nothing valuable."

Fifth. To the fifth interrogatory he saith: "I do not know who broke open the safes, or the number of the safes, or in what manner they were broken, or what became of the contents of the safes."

Sixth. To the sixth interrogatory he saith: "I did not see the safe or safes after the attack on the train, or the contents of the safes; nor did I make any effort to recover the safes, because my duty as conductor was to take care of my train and move it forward. Other persons were there to look after the express matter and safes. I have stated, in answer to former interrogatories, all that I know in answer to this interrogatory."

Seventh. To the seventh interrogatory he saith: "He knoweth not, unless it be to state that the attack on the train was so sudden and unexpected that resistance was impossible, and there was no time to make combination to resist before the engine and express car were gone from us up the road. The day after, at Retreat Station, on my return, I saw a lid of one of the safes, which had evidently been broken off, or mashed off with some heavy article."

A. WHEDEN.

121 *Washington testimony.*

In the circuit court of the United States for the southern district of New York. In equity.

THE UNITED STATES, PLAINTIFFS,
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, DONALD MACKAY, LATHAM A. FISH, and ADAMS EXPRESS COMPANY.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I hereby certify that, on the 26th day of April, A. D. 1871, before me, John J. Johnson, a commissioner of the United States for the District of Columbia, at my office, No. 389 D street, north, in said District, at the hour of 11 o'clock a. m., was produced to and personally came before me, C. P. Benedict, John Irwin, and John P. Bigelow, witnesses
122 on behalf of the Adams Express Co., to depose in a civil cause depending in the circuit court of the United States for the southern district of New York, on the equity side of the said court, wherein the United States are plaintiffs, and Washington R. Vermilye, James A. Trowbridge, Donald Mackay, Latham A. Fish, and Adams Express Co., whose testimony is alleged to be material in said civil cause, on behalf of the said Adams Express Co.

And the said C. P. Benedict and John P. Bigelow, being of lawful age and sound mind, and being by me first duly examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth touching the matters in controversy in said civil cause, deposes and says:

[SEAL.]

123 Circuit court of the United States for the southern district of New York. In equity.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, DONALD MACKAY, LATHAM A. FISH, and ADAMS EXPRESS COMPANY.

GENTLEMEN: You are hereby notified that C. P. Benedict and others

will be examined, de bene esse, before me, at my office, opposite the City Hall, in Washington City, in the District of Columbia, on Wednesday, the 26th day of April, 1871, at 11 o'clock in the forenoon, as witnesses for the defendants, the Adams Express Company, according to the act of Congress in such case made and provided; at which time and place you are entitled by law to be present and put interrogatories to such witnesses.

J. J. JOHNSON,
U. S. Commissioner.

To C. D. BURRILL, Esq.

NEW YORK CITY, *April* 21, 1871.

124 (Endorsed:) C. C. U. S. S. D. N. Y. The United States *vs.* Washington R. Vermilye et al. Notice of examination of witnesses. Due service of a copy of the within notice is hereby admitted.

C. D. BURRILL,
Att'y for Vermilye & Co.

N. Y., *April* 22, 1871.

The examination of the witnesses under the within notice is hereby adjourned to May 2d, at same time and place.

C. D. BURRILL,
Atty. for Vermilye & Co.
W. D. WEBB,
For Ex. Co.

125 In the circuit court of the United States for the southern district of New York. In equity.

THE UNITED STATES, PLAINTIFF,
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWbridge, Donald Mackay, Latham A. Fish, and Adams Express Company, defendants.

APRIL 27, 1871.—Met agreeably to notice hereto annexed. Present, the Adams Express Co., by counsel, and by consent the examination was adjourned till Tuesday, May 2, 1871, at same hour and place.

J. J. JOHNSON,
U. S. Commissioner.

Met pursuant to above. Present, counsel for the Express Company and Vermilye & Co.

Thereupon CYRIL P. BENEDICT, being duly sworn, deposes and says:

Q. 1. State your name, residence, and occupation.

A. My name is Cyril P. Benedict; I reside in Washington, D. C.; I am the agent of the Adams Express Company, and my office at the Treasury Department; I am 36 years of age.

126 Q. 2. State what your occupation was in July, 1868?

A. I was agent of Adams Express Company at the Treasury Department; I have an office in the Treasury building.

Q. 3. During the year 1868, did you at any time take any steps to caveat any Treasury bonds or notes; and, if so, at what date; and state, if you can, what were the numbers of the bonds.

A. I did; on July 20th or 21st, 1868; I don't recollect the numbers of the bonds.

Q. 4. Tell us exactly what you did.

A. I took a letter from Mr. Sanford, the general superintendent of the Adams Express Co., written to me relative to the bonds. There was a circular attached, and the letter had reference to the bonds specified in the circular. I took that letter and circular to the Loan Branch of the Treasury Department—Secretary's office—and delivered them to Mr. Bigelow or Mr. Andrews, I don't know which, and requested them to caveat the bonds, as specified in the circular. That is all I did with the letter and circular.

Q. 5. What became of the letter and circular?

A. I left them with Mr. Bigelow or Andrews.

C. P. BENEDICT.

Sworn to and subscribed before me this 2d day of May, 1871.

J. J. JOHNSON,
U. S. Commissioner.

Appeared also JOHN IRWIN, who, being duly sworn, deposes and says:

Q. 6. State your name, age, residence, and occupation.

A. My name is John Irwin; I am 39 years of age; I reside in Washington, D. C.; I am a clerk in the Treasury Department.

127 Q. 7. How were you employed in July, 1868?

A. I was a clerk in the Loan Branch, Treasury Department, in the Secretary's office.

Q. 8. State, if you please, what were your duties at that time.

A. I was in charge of a division employed in the redemption and conversion of 7.30 Treasury notes. My duties, in that connection, were to see that notes presented for redemption or conversion were properly checked upon numerical registers kept for that purpose, and the numbers of the same entered; to enter caveats against notes when required to do so; to examine notes, with reference to endorsement and otherwise; to reject and throw out notes bearing evidence of erasure of payee's name or endorsement, and keep a record of all conversions and redemptions.

Q. 9. Mr. Irwin, tell us what steps were taken in the caveating of 7.30 notes?

(Objected to, because not limited to the notes in controversy.)

A. Upon the receipt of a letter at the Department requiring the caveating of any note, that letter was duly entered upon a book containing a record of letters received and numbered; it was then sent to me to have the caveat entered as requested, which was done; I would give such letter then to the clerk having charge of caveats correspondence; he would enter a record upon a book, kept by him for that purpose, of the numbers of the notes, denomination, and series, and upon presentation of such notes would notify the parties caveating.

Q. 10. Was any entry made upon the numerical register of the 7-30 notes of the fact that the notes had been caveated?

[Same objection as above made by Mr. Chandler.]

128 A. There was. The word "stops" would be written opposite the number of the note, with the name of the party and the number of the letter requesting such caveat.

Q. 11. Do you recollect that any 7-30 notes were caveated in July, 1868, at the instance of the Adams Express Company; and, if so, state, if you can, the numbers, the denomination, and dates of the series of such notes?

A. Some time in 1868 I received a circular purporting to be published by Adams Express Company, containing number and description of 7-30 notes, which they desired to have caveated. This circular contained a large number of bonds; I cannot recollect them all.

Q. 12. Did you caveat all the notes in that circular?

A. I am not prepared to say that I did; I caveated some of them.

Q. 13. Do you remember whether 7-30 notes of the denomination of $1,000 each, of the series issued June 15, 1865, numbers 48837, 48838, 48839, 48840, and 143625, were included among the notes caveated by you at that time?

[Objected to unless the witness proposes to answer from his recollection merely.]

A. I recollect caveating certain bonds, but the date of caveating or numbers I do not remember.

Q. 14. Look at the circular now shown you, and which is to be annexed to the deposition taken under this commission, and state whether that is the circular upon which the notes were caveated.

A. It is.

Q. 15. Can you state now whether the notes referred to by their numbers in the 13th interrogatory were caveated by you?

A. Of the notes in this circular, I find of the denomination of $1,000, second series, the following numbers: 48837, 48838, 48839, 48840,
129 caveated upon the books of the Department, not in my own handwriting, but in that of Mr. Walton; No. 143625, caveated upon the books of the Department, by myself, on the 29th of May, 1868, at the request of the First National Bank of New Albany, Indiana. No additional memorandum thereto of the Adams Express Company, meaning that the notes were also caveated by their request. Both caveats, that made by myself and by Mr. Walton, refer to the number of this circular.

Q. 16. What do you mean in your answer, by term second series?

A. I mean the series dated June 15, 1865.

Q. 17. Do you remember, or can you tell whether notes of the 7-30 denomination of $100 each, of the issue of June or July 15, 1865, Nos. 172470, 23457, or 234571 and 37209, are among the notes caveated under this circular?

A. I find of the 3d series, dated July 15, 1865, of the denomination of $100, the following numbers were caveated, namely: 37209, 172470, 234571. They were caveated by myself in pursuance of the request of the Adams Express Company, and were contained in their circular before shown me.

Q. 18. Do you know by whom the 7-30 notes, about which you have been testifying, were sent to the Treasury Department for redemption or conversion?

A. I have a record, kept by myself, of a return of the above notes to the caveat-clerk, and that record shows the notes to have been sent to the Department by Vermilye & Co., of New York.

Q. 19. Do you know anything about a circular issued by the Treasury Department prescribing regulations limiting the time within which the 7-30 notes were to be converted into 5-20s?

A. I cannot speak definitely; I am not sure about it, but I think such a circular was issued.

Cross-examined by counsel for Vermilye & Co.:

130 Cross-q. 20. Do you know or recollect anything about the caveating 7-30 notes in questions 13 and 17, except from the ex-

amination which you have made within a day or two, of the records and papers in the loan-room of the Department?

A. I do remember, soon after hearing of the robbery of the express car in Indiana, receiving a letter of the First National Bank of New Albany, Indiana, requesting the caveating of certain notes, and also remember receiving a circular, which I identify as the one now in my hands, published by Adams Express Company, requesting caveats to be entered. I remember when I received that circular, and proceeded to caveat the notes on it, that I did not have the file number of the office on it. I speak now of the circular. I went to the clerk in charge of the numbering of such papers, and he gave me the number of 25984, which I put upon it. That is all I remember about it.

Cross-q. 21. Independent of your examination of record, do you remember that the 7-30s described in questions 13 and 17 were embraced amoung the caveated notes?

A. I do not.

JNO. IRWIN.

Sworn and subscribed before me this 2d day of May, 1871.

J. J. JOHNSON,
U. S. Commissioner.

Adjourned till to-morrow morning at 10.30 a. m., at same place.

J. J. JOHNSON,
U. S. Commissioner.

Met, pursuant to the above. Present, counsel for Adams Express Co., and Vermilye & Co., when JOHN P. BIGELOW was duly sworn, deposes and says:

Q. 22. State your name, age, residence and occupation.

131 A. My name is John B. Bigelow. I am 33 years of age. I reside in this city. I am chief of the Loan-Division in the Secretary's Office, Treasury Department.

Q. 23. What was your occupation in July, 1868?

A. I was assistant chief of the Loan-Division of the Secretary's Office. W. H. Andrews was the chief.

Q. 24. What were the duties of that office?

A. The duties of the office were the issue and redemption of all United States bonds, certificates of indebtedness, and Treasury notes.

Q. 25. Were the 7.30 Treasury notes included in the denomination Treasury notes used in your last answer?

A. They were.

Q. 26. Was any record kept of the caveats filed against those notes; and, if so, where was that record kept?

A. There was a record kept in the office of the Loan-Division, showing the number of notes caveated, the date of the notes, the date of the caveats, and by whom caveated. Opposite the number of each note a blank line was left at the time of the caveat, so that when such notes are presented, on this line was entered date of presentation and by whom presented. Immediately on the presentation of any such notes, they were held, and the party caveating, as well as the party presenting, were each notified. The former notified by whom presented, and the latter by whom caveated, with the request that each party furnish affidavits in reference to their claim to the notes. On the receipt of such affidavits, the notes, with all papers pertaining

thereto, were referred to the First Comptroller for decision of ownership. The notes were then disposed of as directed by that officer.

[Answer objected to, because not confined to the notes in controversy.]

Q. 27. Was there any particular form of caveat?

[Same objection made as to answer in 26th interrogatory.]

132 A. No particular form. They were caveated on letters received from parties describing the securities, and such letters were filed as caveats.

Q. 28. Do you recollect a caveat filed by the Adams Express Co. some time in July, 1868?

A. I recollect one filed in 1868.

Q. 29. Can you produce that caveat, so that a certified copy of it may be attached to your deposition?

A. Yes, sir; I do now produce it, and exhibit it to the commissioner.

[A certified copy is herewith produced, and marked and filed Exhibit No. 1, to which Mr. Chandler objects, because the original is not produced.—J. J. JOHNSON, *U. S. Commissioner.*]

Q. 30. Do you know whether the notes specified in that caveat, 48837, 48838, 48839, 48840, and 143625, of the series of June 15, 1865, of the denomination of $1,000, and also notes numbered 172470, 234571, and 37209, of the series of July 15, 1865, of the denomination of $100 each, were caveated in accordance with the instructions therein contained?

A. Yes, sir.

Q. 31. Do you know whether Messrs. Vermilye & Co., of New York, were notified of the fact that these notes specified in the last question had been caveated?

A. Letters to that effect were written to them April 14, 1869, and April 17, 1869, of which letters certified copies are hereto annexed, and marked Nos. 2 and 3.

[Answer objected to because originals not produced.]

Q. 32. Have you examined the books of your office recently with reference to the rules specified, and will you annex to your deposition certified copies of the entries in these books, specifying what disposition has been made of these notes?

[Objected to, because originals have not been produced.]

133 A. Yes, sir. I have examined the books and will produce the certified copies.

[The said certified copies are herewith filed, and marked Exhibits No. 4.]

Q. 33. Was there a circular at any time issued by the Treasury Department limiting the time in which the seven-thirty notes could be converted into five-twenties?

A. Yes, sir; there was.

Q. 34. Can you produce a copy of that circular?

A. I cannot, only a press-copy, sent to the Associated Press.

Q. 35. Look at the paper now shown you, and state what it is.

A. It is a copy of the press-copy of the circular to the Associated Press, and which I spoke of in my testimony.

[Said copy is herewith filed and marked Exhibit No. 5.

Mr. Chandler objects because the original is not produced, nor is the notice brought home to Vermilye & Co.]

Q. 36. Is the caveat spoken of as filed by the Adams Express Co., against the notes referred to in the foregoing interrogatory, part of the files of the Treasury Department?

A. It is.

Cross-examined by counsel for Vermilye & Co.:

Cross-q. 37. Have you any recollection of the caveating of the particular notes in interrogatory 30, aside from your examination of the records?

A. No, sir.

Cross-q. 38. Did you make the entries of the caveat of these notes yourself?

A. No, sir.

JNO. P. BIGELOW.

Sworn to and subscribed before me this 3d day of May, 1871.

J. J. JOHNSON,
U. S. Commissioner.

134 EXHIBIT No. 1.

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
May 5th, 1871.

Pursuant to the act of Congress of the 22d February, 1849, I hereby certify that the annexed is a true copy from the records and files in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

GEO. S. BOUTWELL,
Secretary of the Treasury.

ADAMS EXPRESS COMPANY,
OFFICE OF THE GENERAL SUPERINTENDENT,
59 *Broadway, New York, July* 20, 1868.

C. P. BENEDICT, Esq.,
Adams Express, Washington, D. C.:

DEAR SIR: I herewith enclose a list of the bonds which were stolen from our car near Seymour, Ind., on the night of May the 22d.

Will you please have these bonds caveated at the Department?

We are just advised that bonds No. 17967 for $50, and 164095 and 154954 for the same amount, were sent to the Treasury Department on the 13th of June, by Messrs. White, Morris & Co. Please make enquiries if they have been received by the Department in Washington, and advise us as soon as possible, that we may take steps to recover the same.

135 Be particular in attending to this immediately, and request the proper officer of the Department to be good enough to notify us at the earliest possible moment after reception of any of the bonds described in the circular.

Respectfully, yours,

F. LOVEJOY,
Ass't Gen'l Sup't.
Per AMES.

Express robbery.—Notice.

OFFICE OF THE ADAMS EXPRESS COMPANY,
Cincinnati, May 28th, 1868.

The following is a description of some of the property stolen from this company on the occasion of the seizure of the express train of the Jeffersonville Railroad Company, near Seymour, Indiana, on the night of the 22d instant:

United States seven-thirty notes, Nos. 143625, 143626, 143627, 143628, 143629, 143630, of second series, issued under act of March 3d, 1865; also, Nos. 4146, 4447, 4448, 4449, 4450, 4451, 4452, of third series, issued under act of March 3, 1865.

All the above notes are for one thousand dollars each, and are each endorsed thus: "Pay Secretary of the Treasury for redemption. W. Mann, cashier."

UNITED STATES SEVEN-THIRTY BONDS, OF $50 EACH, DATED JULY 15TH, 1865.

Letter A.	Letter B.	Letter C.	Letter D.
No. 29125	No. 29126	No. 17967	No. 164048
89509	26194	101055	164116
115457	102086	150227	224508
164093	161194	164095	333940
238029	85962	321263	

136 UNITED STATES SEVEN-THIRTY BONDS OF $100 EACH, DATED JULY 15TH, 1865.—ALL OF LETTER C.

No. 3444	No. 172040	No. 232098	No. 336767
3448	172048	220356	470140
37209	172225	232646	471391
103595	172343	232800	471962
103596	172470	234571	196893
122207	183913	254151	
145948	178846	253816	

UNITED STATES SEVEN-THIRTY BOND OF $500.—LETTER D.

No. 9006.

UNITED STATES SEVEN-THIRTY BONDS OF $1,000 EACH.

Letter A.	Letter C.	Letter D.
No. 48837, June 15.	No. 6207, July 15.	No. 24900, June 15.
	6213, July 15.	
	6216, July 15.	48840, June 15.
	48838, June 15.	
	48839, June 15.	

COMPOUND-INTEREST NOTES—THREE YEARS.

Letter A.	Letter B.	Letter C.	Letter D.
No. 4906, $100	No. 56650, $10	No. 160298, $10	No 16760, $50
24291, 50	89307, 10	44805, 20	44737, 10
26645, 10	148629, 10	140123, 10	51636, 20
46488, 20			90513, 10
52643, 10			
52639, 10			

TREASURY NOTES, BEARING 5 PER CENT. INTEREST.

	Letter B.	Letter C.	Letter D.
No.	2136 for $100	No. 885 for $50	No. 2146 for $50
	7217 50		
	73575 20		
	73566 20		
	104416 20		
	66837 10		

137 COUPONS.—FROM BONDS OF HARDIN COUNTY, KY.

Payable at the Mercantile Bank, New York: No. 158, for $30, due October 1, 1867; No. 17, for $30, due October, 1867; No. 158, for $30, due April 1, 1868; No. 17, for $30, due April, 1868; Nos. 399 and 400, for $3 each, due October 1, 1867.

MUTILATED CURRENCY.

A considerable amount of mutilated greenbacks and national-bank notes and postal currency being returned for redemption or exchange.

☞ All persons, firms, and corporations are hereby cautioned against receiving or negotiating the above-described bonds, notes, and coupons, as the same were stolen, and this company claims the right to recover their possession whenever and wherever they can find the same.

Any person to whom any of this property may be offered will subserve the ends of justice and much oblige this company by causing the arrest of the party offering the same, and advising either of the following persons immediately by telegraph.

HENRY SANFORD,
Gen. Sup't, New York.
ALFRED GAITHER,
Manager, Cincinnati.
ALLAN PINKERTON,
Chicago.

(EXHIBIT No. 2.)

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
May 5th, 1871.

Pursuant to the act of Congress of the 22d February, 1849, I hereby certify that the annexed is a true copy of the original from the records in this Department.

In witness whereof I have hereunto set my hand, and cause the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

GEO. S. BOUTWELL,
Secretary of the Treasury.

138 (Copy.)

TREASURY DEPARTMENT,
Washington, D. C., April 14, 1869.

GENTLEMEN: The following-described 7-30 notes, forwarded April 19th, for redemption, in lot of $8,000, are claimed by Adams Express

Co.: No. 48837, 48838, 48839, 48840, and 143625, of $1,000 each, June 15, 1865.

The general appearance of the notes warrants the belief that the payee's name has been extracted from the face of the notes.

You will please forward an affidavit setting forth the facts concerning the purchase of the notes, upon receipt of which the case will be submitted to the proper officer for investigation.

Very respectfully,

W'M A. RICHARDSON,
Assistant Secretary.

Messrs. VERMILYE & Co., *New York.*

(EXHIBIT No. 3.)

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
May 5, 1871.

Pursuant to the act of Congress of the 22d February, 1849, I hereby certify that the annexed is a true copy from the records in this Department.

In witness whereof I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

[SEAL.]

GEO. S. BOUTWELL,
Secretary of the Treasury.

139

(Copy.)

TREASURY DEPARTMENT,
Washington, D. C., April 17, 1869.

GENTLEMEN: The following-described 7-30 notes forwarded for redemption April 14, 1869, in lot of $2,000, are claimed by Adams Express Co. No. 172470, 37209, 234571, of $100, July 15, 1865. The balance of the remittance, $1,700, has been passed for redemption.

Very respectfully,

W'M A. RICHARDSON.
Ass't Secretary.

Messrs. VERMILYE & Co.,
New York.

(EXHIBIT No. 4.)

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
May 5, 1871.

Pursuant to the act of Congress of the 22d February, 1849, I hereby certify that the annexed is a true copy from the records in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

GEO. S. BOUTWELL,
Secretary of the Treasury.

140 *Register.*

BY WHOM STOPPED.		DESCRIPTION OF SECURITIES STOPPED.			
Date.	Name.		Act of	Number.	Amount.
May 28, 1868.	Adams Express Co., C. P. Benedict, ag't, Washington, D. C.	7-30s	June 15, 1865	143,635	$1,000
			July 15, 1865	37,209	100
				172,470	100
				234,571	100
			June 15, 1865	48,837	1,000
				8	1,000
				9	1,000
				48,840	1,000

141 *Of caveats.*

BY WHOM PRESENTED FOR REDEMPTION.		DISPOSITION OF SECURITIES STOPPED.	
Date.	Name.	Date.	To whom referred.
April 14, 1869	Vermilye & Co.	Lot of $8,000	1st Comp'r.
April 14, 1869	do.	Lot of 2,000	
Do.	do.	Lot of 2,000	
Do.	do.	Lot of 2,000	
Do.	do.	Lot of 8,000	1st Comp'r.
Do.	do.	do	do.
Do.	do.	do	do.
April 14, 1869	Vermilye & Co.	Lot of 8,000	1st Comp'r.

142 (EXHIBIT No. 5.)

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
May 5th, 1871.

Pursuant to the act of Congress of the 22d February, 1849, I hereby certify that the annexed paper is a true copy of the original from the records in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.] GEO. S. BOUTWELL,
Secretary of the Treasury.

(Copy.)

TREASURY DEPARTMENT,
Washington, D. C., June 22, 1868.

SIR: Please embody the accompanying notice in your despatches to the Associated Press, and oblige,

Yours respectfully,

H. McCULLOCH, *Secretary.*

L. A. GOBRIGHT,
Associated Press, Washington, D. C.

TREASURY DEPARTMENT, *June 22d*, 1868.

Holders of 7-30 notes, who desire to avail themselves of their right

143 to convert the same into 5-20 bonds, are hereby notified that the notes must be presented at the Department at Washington, or at the office of the Assistant Treasurer U. S., at New York, as follows:

The notes that matured on the 15th of June, must be presented on or before the 15th of July; the notes that become due on the 15th of July must be presented on or before the 1st of August.

The bonds to be issued in exchange for the notes will bear interest from the first day of July, 1868, and the interest on the notes will be calculated accordingly.

The bonds will be of the issue of 1867 and 1868, as may be preferred, and they will be issued in the order in which the notes are presented.

H. McCULLOCH,
Secretary of the Treasury.

I further certify that the foregoing depositions of C. P. Benedict, John Irwin, and John P. Bigelow, were then and there reduced to writing by me in the presence of the deponents, and to them by me carefully read over, and by them subscribed in my presence after having been so reduced to writing.

I further certify that the reason for taking said deposition was and is that the deponents live at a distance of more than one hundred miles from the place where said civil cause is appointed to be tried, heard, and that notice was made out and given by me to C. D. Burrill, esq., the attorney, to be present at the taking of said deposition, and to put interrogatories if thought fit. Said service was acknowledged.

I further certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the events of this cause.

I further certify that it being impracticable for me to deliver
144 said depositions with my own hand into the court for which it was taken, I retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by mail to the said court for which it was taken, and to remain under my seal entire until opened.

I further certify that the fee for taking the said deposition, amounting to twenty dollars, has been paid to me by Adams Express Co., and that the same is just and reasonable for the services performed.

Given under my hand and seal, at the city of Washington, District of Columbia, this 8th day of April, A. D. 1871.

JOHN J. JOHNSON,
Commissioner of the United States
for the District of Columbia.

Clerk's Certificate.

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that John J. Johnson, whose signature is subscribed to the foregoing certificate of deposition, was, at the time of signing and attesting the same, a United States commissioner for said District, duly commissioned and qualified, authorized to take acknowledgments, and to administer oaths; and that his attestation thereto is according to law.

Witness my hand and seal of said court, this 8th day of May, 1871.

[SEAL.] R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS, *Ass't Clerk.*

145 *New York testimony.*

C. C. U. S. S. D. N. Y.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE ET AL., IMPLEADED with the Adams Express Company. } In equity.

Testimony taken on the part of the defendant, the Adams Express Company, in the above action, under the 67th rule in equity, and pursuant to notice, before Joseph Gutman, jr., examiner.

NEW YORK, *October 24th*, 1870.

Present, C. M. Da Costa, esq., of counsel for defendant, Adams Express Company; J. E. Burrill, esq., of counsel for defendants, W. R. Vermilye et al.

GEORGE MCKITTRICK, a witness of lawful age, produced on the part of the defendant, the Adams Express Company, having been by me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, and being examined by Mr. Da Costa, did depose and say:

146 Q. 1. Were you in the employ of the Adams Express Company in the month of May, 1868?

A. Yes.

Q. 2. Did you then know where the place of business of Vermilye & Co. was?

A. Yes; it was in Wall street, between Nassau and William, on the north side. I forget the number.

Q. 3. Did you serve any notices on the defendants, and if so, on what days?

A. I did. One was served on May 29, 1868, of which I produce and annex a copy, marked A. One was served June 5th, 1868, of which I also produce and annex a copy, marked B.

And being cross-examined by Mr. Burrill, he did depose and say:

Cross Q. 4. Have you any present recollection of serving those notices, or do you speak from memoranda?

A. I speak from personal recollection.

Cross Q. 5. Do you recollect that you did serve them?

A. Yes.

Cross Q. 6. Do you recollect the person on whom you served them?

A. No, sir.

And being re-examined by Mr. Da Costa, he did depose and say:

Redirect Q. 7. Was he a person in their office?

A. Yes, sir; behind the counter.

And being further cross-examined by Mr. Burrill, he did depose and say:

Cross Q. 8. This place you speak of, you say, was in Wall street. Was it under the Bank of North America?

A. It was under one of those banks; I forget which one.

147 Cross Q. 9. It was on the north side of Wall street, two or three doors from William street?

A. Yes.

GEORGE MCKITTRICK.

Sworn to before me this 24th October, 1870.

JOSEPH GUTMAN, JR.,
Examiner.

D. B. BARNUM, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and being examined by Mr. Da Costa, did depose and say:

Q. 1. You are the cashier of the Adams Express Company?

A. I am now.

Q. 2. In May, 1868, were you the assistant cashier?

A. Yes.

Q. 3. And have been in the employ of the company since 1863?

A. Yes.

Q. 4. Did the company cause any notices to be published in the newspapers, with reference to the robbery of certain United States Treasury notes, at Marshfield, on the Jeffersonville and Indianapolis Railroad?

A. Yes.

Q. 5. In what papers were they published in the city of New York?

A. In the Herald, Times, Tribune, World, Evening Post, and Express.

Q. 6. Do you remember the date of the first publication?

148 A. I am not positive about the date of the first publication. I have here a copy of the Tribune of May 29, which contains the advertisement, but whether this is the first or not I cannot say.

Q. 7. Was the publication the same in all the papers?

A. Yes.

Q. 8. Do you produce a copy of the advertisement?

A. Yes.

Q. 9. Can you cut this out of the Tribune and annex it to your deposition?

A. No, I cannot; the paper is borrowed, and I promised to return it as it is.

Q. 10. Will you produce and annex a copy to your deposition?

A. I will. I will annex, if I can, a printed copy, and if not, I will annex a written copy; and I do hereby so annex it, marked C.

Q. 11. Did the Bank of New Albany, Indiana, make any claim on the Adams Express Company for the value of the bonds which they had delivered to it for transportation and which were so stolen?

A. They did, and we paid them for them in full, on the 9th of July, 1868.

Q. 12. How much did you pay them?

A. For the thirteen 7.30 notes, each for $1,000, with the premium, and interest to July 1, we paid $14,747.75.

And being cross-examined by Mr. Burrill, he did depose and say as follows:

Cross Q. 13. Have you any memorandum of the papers in which you published that advertisement?

A. I have the bills of all the papers that I have named.

Cross Q. 14. Have you any copy of the advertisement?

A. I have no copy here except this in the Tribune.

Cross Q. 15. When was the first publication made?

A. I am not able to state; it was for several days. Probably the 29th was the first.

149 Cross Q. 16. You have not the numbers of the notes that you paid the bank at New Albany for?

A. The numbers do not appear on my memorandum here. I have a copy of the letter in which I advised the parties to draw on me for the amount.

D. B. BARNUM.

Sworn to before me this 24th October, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

All of the preceding testimony is taken subject to the objection of Mr. Burrill for immateriality.

EXHIBIT A, J. G., JR.

To the Public.

PRESIDENT'S OFFICE OF THE ADAMS EXPRESS COMPANY,
New York, May 28, 1868.

Among other property stolen from the Adams Express Company, near Seymour, Ind., on the night of the 22d instant, were six U. S. 7.30 notes, $1,000 each, second series, act March 3, 1865, numbered 142,625 to 143,630, both inclusive. Also seven U. S. 7.30 notes, $1,000 each, third series, act March 3, 1865, numbered 4,446 to 4,452, both inclusive. All endorsed, "Pay Secretary of the Treasury for redemption.—W. Mann, cashier."

Also the following coupons of Hardin Co., Ky., bonds payable at the Mercantile Bank, New York: one coupon for $30, No. 158, due October 1, 1867; one for $30, No. 158, due April, 1868; one for $30, No. 17, due October 1, 1867; one for $30, No. 17, due April 1, 1868; two for $3 each, Nos. 399 and 400, due October 1, 1867.

All persons, firms and corporations are hereby cautioned against
150 receiving or negotiating the above-described notes or coupons, as the same were stolen. This company claims the right to recover their possession whenever and wherever they can find the same.

WILLIAM B. DINSMORE, *President.*

EXHIBIT B. J. G., JR.

Express robbery.—Notice.

OFFICE OF THE ADAMS EXPRESS COMPANY,
Cincinnati, May 28th, 1868.

The following is a description of some of the property stolen from this company on the occasion of the seizure of the express train of the Jeffersonville Railroad Company, near Seymour, Indiana, on the night of the 22d instant.

UNITED STATES SEVEN-THIRTY NOTES.

Nos. 143,625, 143,626, 143,627, 143,628, 143,629, 143,630, of second series, issued under act of March 3d, 1865.

Also, Nos. 4,446, 4,447, 4,448, 4,449, 4,450, 4,451, 4,452, of third series, issued under act of March 3d, 1865.

All the above notes are for one thousand dollars each, and are each endorsed thus: "Pay Secretary of the Treasury for redemption. W. Mann, cashier."

UNITED STATES SEVEN-THIRTY BONDS OF $50 EACH.

Dated July 5th, 1865.

Letter A.	Letter B.	Letter C.	Letter D.
No. 29,125	No. 29,126	No. 17,967	No. 164,048
89,509	26,194	101,055	164,116
115,457	102,086	150,227	224,508
164,093	161,194	164,095	333,940
238,029	85,962	321,263	

151 UNITED STATES SEVEN-THIRTY BONDS OF $100 EACH.

Dated July 15th, 1865.

All of letter C.

No. 3,444	No. 172,040	No. 232,098	No. 336,767
3,448	172,048	220,356	470,140
37,209	172,225	232,646	471,391
103,595	172,343	232,800	471,962
103,596	172,470	234,571	196,893
122,207	183,913	254,151	
145,948	178,846	253,816	

United States seven-thirty bond of $500, *Letter D, No.* 9006.

UNITED STATES SEVEN-THIRTY BONDS OF $1,000 EACH.

Letter A.	Letter C.	Letter D.
No. 48,837, June 15.	No. 6,207, July 15.	No. 24,900, June 15.
	6,213, July 15.	
	6,216, July 15.	48,840, June 15.
	48,838, June 15.	
	48,839, June 15.	

COMPOUND-INTEREST NOTES—THREE YEARS.

Letter A	Letter B.	Letter C.	Letter D.
No. 4,996, $100	No. 56,650, $10	No. 160,298, $10	No. 16,760, $50
24,291, 50	89,307, 10		44,737, 10
26,645, 10	148,829, 10	44,805, 20	51,636, 20
46,488, 20		140,123, 10	90,513, 10
52,643, 10			
52,639, 10			

TREASURY NOTES BEARING 5 PER CENT. INTEREST.

Letter B.	Letter C.	Letter D.
No. 2,136 for $100	No. 885 for $50	No. 2,146 for $50
7,217 50		
73,575 20		
73,566 20		
104,416 20		
66,837 10		

COUPONS—FROM BONDS OF HARDIN COUNTY, KY.

Payable at the Mercantile Bank, New York.

No. 158, for $30, due October 1, 1867.
No. 158, for $30, due April 1, 1868.
152 No. 17, for $30, due October, 1867.
No. 17, for $30, due April, 1868.
Nos. 399 and 400, for $3 each, due October 1, 1857.

MUTILATED CURRENCY.

A considerable amount of mutilated greenbacks and national-bank notes and postal currency being returned for redemption or exchange.

☞All persons, firms, and corporations are hereby cautioned against receiving or negotiating the above described bonds, notes and coupons, as the same were stolen, and this company claims the right to recover their possession, whenever and wherever they can find the same.

Any person to whom any of this property may be offered will subserve the ends of justice, and much oblige this company, by causing the arrest of the party offering the same, and advising either of the following persons immediately, by telegraph.

HENRY SANDFORD,
Gen'l Sup't. New York.
ALFRED GAITHER,
Manager, Cincinnati.
ALLAN PINKERTON,
Chicayo.

EXHIBIT C, J. G., JR.

Copy of advertisement.—Banking and financial.

Among other property stolen from the Adams Express Company, near Seymour, Ind., on the night of the 22d inst., were six United States 7-30 notes, $1,000 each, second series, act March 3d, 1865, numbered 143625 to 143630, both inclusive. Also seven United States 7-30 notes, $1,000 each, third series, act March 3d, 1865, numbered 4446 to 4452, both inclusive, all endorsed "Pay Secretary of the Treasury for redemption. W. Mann, cashier."

153 Also the following coupons of Hardin Co., K'y, bds., payable at the Mercantile Bank, New York; one coupon for $30, No. 158, due Oct. 1, 1867; one for $30, No. 158, due April 1, 1868; one for $30, No. 17, due Oct. 1, 1867; one for $30, No. 17, due April 1, 1868; two for $3.00 each, Nos. 399 and 400, due Oct. 1, 1867.

All persons, firms, and corporations, are hereby cautioned against receiving or negotiating the above-described notes or coupons, as the same were stolen. This company claims the right to recover their possession whenever and whereever they can find the same.

(Signed) WILLIAM B. DINSMORE,
President of the Adams Express Company.

NEW YORK, *May* 28, 1868.

154 Circuit court of the United States for the southern district of New York. In equity.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE ET AL., IMPLEADED with the Adams Express Company.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Gutman, jr., an examiner in equity, duly appointed in this court, do hereby certify that the foregoing are the depositions and proofs taken before me on the part of the defendant, the Adams Express Company, in the cause in the caption named under and pursuant to the 67th rule in equity.

New York, October 5, 1871.

JOSEPH GUTMAN, JR., *Examiner.*

155 *Stipulation as to purchase, and list of notes.*

C. C. U. S., S. D. N. Y.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, DONALD MACKAY, LATHAM A. FISH, and the Adams Express Company. } In equity.

The defendants, Vermilye & Co., hereby admit that the five one thousand dollar U. S. seven-thirty Treasury notes, numbered respectively, 48840, 48837, 48839, 48838, mentioned and described in the pleadings herein, were purchased by them on the 9th day of April, 1869, and that the three one hundred U. S. seven-thirty Treasury notes, numbered respectively, 234571, 37209, and 172420, and also mentioned and described in the pleadings herein, were purchased by them on the 12th day of April, 1869.

The said defendants also admit that the annexed list of numbers, dates and amounts of seven-thirty notes is the original list of notes referred to in the testimony of William P. Hume (taken under a commission issued to Clarksville, Tennessee, in the case of William B. Dinsmore, president of the Adams Express Company, against William B. Duncan and others, and which testimony is admitted by consent,
156 to be read on the trial of this action) as having been forwarded by mail on the first day of October, 1868, to C. A. Seward, esq., counsel for the Adams Express Company, at New York, by said William P. Hume.

Dated New York, September 4, 1871.

CHARLES D. BURRILL,
Attorney for Vermilye & Co.

List of numbers, dates and amounts of seven-thirty bonds (7-30) sent to B Seaman, Cas., May 21, 1868, to be exchanged for five-twenty bonds (5-20) new.

	Date.	Numbers.	Series.	Amounts.
July 15,	1865	321263	C	$50 00
"	"	161194	B	50 00
"	"	164048	D	50 00
"	"	150227	C	50 00
"	"	85962	B	50 00
"	"	17967	C	50 00
"	"	29126	B	50 00
"	"	29125	A	50 00
"	"	26194	B	50 00
"	"	89509	A	50 00
"	"	115457	A	50 00
"	"	238029	A	50 00
"	"	103086	B	50 00
"	"	164093	A	50 00
"	"	164116	D	50 00
"	"	333940	D	50 00
"	"	101055	C	50 00
"	"	294508	D	50 00
"	"	164095	C	50 00
"	"	254151	C	100 00
"	"	239646	C	100 00
"	"	122207	C	100 00
"	"	253816	C	100 00
"	"	290356	C	100 00
"	"	471391	C	100 00
"	"	196893	C	100 00
157 "	"	471962	C	100 90
"	"	145948	C	100 00
"	"	336767	C	100 00
"	"	470140	C	100 00
"	"	232800	C	100 00
"	"	103595	C	100 00
"	"	234571	C	100 00
"	"	37209	C	100 00
"	"	103596	C	100 00
"	"	3448	C	100 00
"	"	183913	C	100 00
"	"	178846	C	100 00
"	"	232098	C	100 00
"	"	172225	C	100 00
"	"	172343	C	100 00
"	"	172048	C	100 00
"	"	172470	C	100 00
"	"	172049	C	100 00
"	"	3447	C	100 00
"	"	9006	D	500 00
"	"	6313	C	1,000 00
"	"	6307	C	1,000 00
June 15,	"	24900	D	1,000 00
July 15,	"	6216	C	1,000 00
June 15,	"	48840	D	1,000 00
"	"	48837	A	1,000 00
"	"	48839	C	1,000 00
"	"	48838	C	1,000 00
158				$12,050 00

159 Circuit court of the United States for the southern district of New York.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, DONALD McKAY. LATHAM A. FISH, and ADAMS EXPRESS COMPANY. } In equity.

NEW YORK, *October* 5, 1871.

Examination of witnesses on the part of defendants, Vermilye and Company, in the above action, under Rule 67 in equity, and pursuant to notice, before Edward G. Thompson, examiner.

Present—John E. Burrill, esq., of counsel for Vermilye & Co.; Charles M. Dacosta, esq., of counsel for Adams Express Co.

160 *Edward N. Whiton.*

EDWARD N. WHITON, being duly sworn, deposes and says:

Direct examination by Mr. Burrill.

Q. 1. Were you, in April, 1869, in the employ of Vermilye & Co and, if so, how long had you been so?

A. I was, I think, about a year and a half previous to that.

Q. 2. When did you leave their employ?

A. I cannot answer that exactly.

Q. 3. About what time?

A. About the latter part of 1869.

Q. 4. Will you look at this book now shown you, called "Bank Numbering Seven-Thirty Book" of Vermilye & Co., and state whether you made any entries in that book?

A. Yes, sir.

Q. 5. Do you find any entry, under date of April 9, 1869, of the purchase of any seven-thirty notes from Suydam & Nason, and, if so, say in whose handwriting it is.

A. I do. The entry is in my handwriting, and is as follows:

"*April* 9, 1869.

"Suydam & Nason, 48,837, 48,838, 48,839, 48,840, 6,207, 6,216 143,625.

"7-30's. $1,000—$7,000; carried out, $7,000."

$1,000 means the denominations; $7,000 means the gross amount; the last $7,000 means the total amount as carried out.

Q. 6. Look in the same book, under date of April 12, 1869, and state whether you find any entry of the purchase from Suydam & Nason, on that day, of any 7-30 notes, and, if so, say in whose handwriting it is.

161 A. Yes; the entry is in my handwriting, and is as follows:

"APRIL 12, 1869—SUYDAM & NASON.

"24,900, 7-30, June, $1,000; carried out..... $1,000

"27,209[a], 23,571[c], 3,448[d].

"172,470[b], July, $100, $400..... $400

Carried out, $1,400."

Q. 7. Those little letters indicate the letters on the bonds?

A. Yes, sir.

Q. 8. When were these two entries made?

A. Do you mean the "day?" That I cannot recollect.

Q. 9. Were they made on the same day as the transaction?

A. They undoubtedly were made, not on the day of the transaction, but the next day; I don't recollect about it.

Q. 10. In the usual course of business, when would they have been made?

A. Next day after the transaction, probably in the afternoon. I think, if I recollect anything at all, that it was in the afternoon those notes were taken, and the next day the entries were made.

Q. 11. They were made from the bonds themselves?

A. The numbers of one of those lots were taken from the bonds them-

selves; the other I cannot swear to. I don't think the numbers were taken in our office. I think they were taken from a slip from Suydam & Nason.

Q. 12. Usually from what were they taken?

162 A. Right from the bonds. I won't say, as to that lot, that they were not, but I have an impression that (it was the $7,000 lot, I think) some one sent me down to take the numbers afterwards from Suydam & Nason, and the numbers were taken by them, and handed to me on a slip of paper. The numbers must be in Suydam & Nason's books.

Q. 13. Have you any personal recollection of the purchase of either of these lots of bonds?

A. No, I have not.

Q. 14. You can tell whether, at this time, it was a usual thing to have lots of this character of bonds presented for sale at the counter?

(Objected to as immaterial and irrelevant. Taken, subject.)

A. It was.

Q. 15. At the time that you were with Vermilye & Co., did they keep any record, or list, or register of lost bonds, or stolen bonds, or altered bonds?

A. No; not for reference.

Q. 16. Were notices or handbills of stolen, forged, or lost bonds of frequent occurrence?

A. Not frequent; occasionally there would be a circular or list handed in; they would be perhaps stuck up on the desk for two or three days, and then struck off on the floor, and swept up in the waste-basket.

Q. 17. What part of the business did you have to do?

A. My business then was taking the numbers of all bonds bought or sold.

Q. 18. From the bonds themselves?

A. From the bonds themselves.

163 Q. 19. Did this consume much time, this comparison of numbers and making the entries?

A. Yes; it took up most of my time.

Q. 20. Were there other clerks required for the same kind of business as yourself?

A. No.

Q. 21. You had that particular charge?

A. There were numbers taken occasionally by other clerks, but that was my business—that was what I did.

Q. 22. From your knowledge of the mode of conducting business there, would it have been practicable to have carried on the business of buying and selling Government securities, if it were necessary to make a reference to ascertain whether the bond offered had been stolen, or lost, or altered, or whether there had been notice received in respect to it?

(Objected to as calling for the opinion of the witness, and as being irrelevant and incompetent. Taken, subject.)

A. I don't think that it would have been practicable; it would have taken up too much time to have consulted the list every time we wanted to pay for or buy a bond.

Cross-examined by Mr. Dacosta.

Q. 23. From whom did you receive these numbers that you have given?

A. I took the numbers from the bonds themselves.

Q. 24. Who handed you the bonds?

A. The bonds were delivered at the window; and these bonds, according to the entry, must have been received by Mr. Meeker; I don't recollect that they were; but he paid for them, and he probably
164 received them at the window, and held them in his hand while he drew a check for them, and then they were put in a drawer from which I took them and took the numbers from them. That was the regular way of doing; I don't recollect that I did take these particular bonds, but that would have been the regular way of doing it.

Q. 25. You said something—that you got the numbers of some of these bonds from Suydam & Nason?

A. There was one lot of bonds; there may have been some transaction a year previous to this; I have an indistinct recollection of going down to Suydam & Nason, and getting some numbers from them of bonds delivered to us; they copied them from their book on a slip of paper. It may have been this transaction; may have been a year previous.

Q. 26. The entries you have read are in your handwriting?

A. Yes, sir.

Q. 27. It was part of your duty to keep them?

A. Yes, sir.

Redirect:

Q. 28. In that case of which you speak, when you say that you recollect going to get the numbers from Suydam & Nason, had those bonds been sold by Suydam & Nason and delivered to Vermilye & Co.?

A. Yes, sir.

Q. 29. How came you to go to them for the numbers?

A. I cannot say positively; the bonds were probably sent to Washington without taking the numbers, and I then went to Suydam & Nason and got the numbers from their books.

Q. 30. In that instance you omitted to take the numbers before sending them to Washington?

165 A. Yes, sir.

Q. 31. But you don't mean to say that that was one of these transactions?

A. No, by no means.

EDWARD N. WHITON.

Thomas B. Meeker.

THOMAS B. MEEKER, being duly sworn, deposes and says:

Direct examination by Mr. Burrill:

Q. 1. In April, 1869, were you in the employ of Vermilye & Co.?

A. Yes, sir.

Q. 2. What was your business there?

A. I received the bonds, and paid for them; drew a check for them.

Q. 3. Did you keep a book of the purchases and sales of the bonds made over the counter?

A. Yes, sir.

Q. 4. Is this the book? (Handing to witness.)

A. Yes, sir.

Q. 5. Do you find in that book, under date of April 9, 1869, an entry of the purchase of any bonds from Suydam & Nason?

A. Yes, sir.

Q. 6. In whose handwriting?

A. In mine.

Q. 7. Read the entry.

A. Under date "April 9, 1869. Suydam & Nason. 99½—$7,000; carried out, $7,220.50," under the entry "$7\frac{3}{10}$ purchases."

Q. 8. 99½ means what?

A. The rate.

166 Q. 9. And $7,000?

A. Is the amount of principal bought.

Q. 10. And $7,220.50?

A. The gross amount, including interest.

Q. 11. According to that, they were purchased at 99½, and accrued interest?

A. Yes, sir.

Q. 12. Will you look at the check now shown you, and state whether that was the check which was delivered in payment of those 7.30 notes mentioned in the entry you have referred to?

A. Yes, sir.

Q. 13. In whose handwriting is it filled up?

A. In mine. The signature is by Mr. Fish. The check is as follows:

"No. 247.] "NEW YORK, *April* 9, 1869.

"Merchants' National Bank:

"Pay to the order of Suydam & Nason seven thousand two hundred and twenty $\frac{50}{100}$ dollars in current funds.

"$7,220.50. (Signed) VERMILYE & CO."

and certified at the bank.

Q. 14. Look at the same book, under date of April 12, 1869, and state whether you find an entry of the purchase of any 7.30 notes, and if so, in whose handwriting?

A. Yes; in mine. The entry is under date "April 12, 1869," under the head of "7.30's bought," and is as follows: "Suydam & Nason, 99½—$1,400; carried out, $1,444.10. This shows purchase at 99½ and accrued interest.

167 Q. 15. Look at the check now shown you, and state whether that is the check given in payment of those 7-30 notes, and filled up by you?

A. Yes, sir. The signature is by Washington R. Vermilye. The check is as follows:

"No. 394.] "NEW YORK, *April* 12, 1869.

"National Bank of Commerce in New York:

"Pay to the order of Suydam & Nason fourteen hundred and forty-four $\frac{10}{100}$ dollars in current funds.

"$1,444\frac{10}{100}$. (Signed) VERMILYE & CO."

and certified at the bank.

Both checks are endorsed, "For deposit, Suydam & Nason."

Q. 16. These bonds in question were presented for sale and received at the counter by you, were they not?

A. Yes, sir.

Q. 17. And when you paid for the bonds, what did you do with them, according to your usual course of business?

A. I examined them, and asked one of the gentlemen, one of the clerks, if they were right and paid the check for them.

Q. 18. And what did you do with the bonds after you had examined and paid for them?

A. Put them in the drawer.

Q. 19. What do you mean by stating that you asked one of the clerks if they were all right?

A. I asked if I should pay them, and the rate; and asked them to examine the bonds, and see if they were correct—to see if they were endorsed.

168 Q. 20. Was there any other examination made besides that, to see if they had the proper endorsement?

A. I cannot say that.

Q. 21. You did not make any?

A. No, sir.

Cross-examined by Mr. DaCosta:

Q. 22. Do you remember, in this instance, to which one of the firm you handed these bonds for examination?

A. I don't remember anything about it. It was to one of the clerks that I used to hand the bonds.

Q. 23. Whose duty it was to examine them?

A. Yes, sir.

Q. 24. What was his name?

A. The gentleman I handed them to was Stevens Cahoone.

Q. 25. You don't remember, in this instance, whether you did so or not?

A. I don't remember anything about it.

Q. 26. Do you remember what denomination of seven-thirties these were?

A. I could not say.

Q. 27. Do you remember the date of them?

A. No, sir.

Q. 28. Do you remember whether they were past due or not?

A. I presume they were past due.

Q. 29. Do you remember how long past due?

A. No, sir.

169 Redirect:

Q. 30. Was it any part of your business to make any examination of the bonds or to make any bargain for the purchase of bonds?

A. No, sir.

Q. 31. Your business was merely to pay for them, and somebody else had bought them and examined them?

A. Yes, sir.

Q. 32. You drew checks and paid for them?

A. Yes, sir.

By Mr. DaCosta:

Q. 33. What was the name of the gentleman whose duty it was to buy bonds at that time?

A. Mr. Cahoone used to buy them over the counter.

Q. 34. Was he the only one?

A. In his absence somebody else would do it.

Q. 35. What other gentleman?

A. Mr. Callahan.

By Mr. Burrill:

Q. 36. Which member of the firm usually purchased Government securities?

A. Mr. Trowbridge.

THOMAS B. MEEKER.

170 LATHAM A. FISH, being duly sworn, deposes and says:

Direct examination by Mr. Burrill:

Q. 1. You are one of the firm of Vermilye & Co.?

A. Yes, sir.

Q. 2. And have been since when?

A. Since 1st of April, 1869.

Q. 3. Prior to that time you had been in the employ of the old firm?

A. Yes, sir.

Q. 4. For how long a time?

A. Since April, 1864.

Q. 5. Prior to that time, what employment were you in?

A. In the United States service.

Q. 6. You have been familiar with Government securities and dealings in them since 1864?

A. As far as my practice of book-keeping could give me knowledge of them, in a general way—not in detail.

Q. 7. Since what time have you been familiar with transactions in Government securities?

A. Since 1864.

Q. 8. Since 1864, have the transactions of Vermilye & Co., in Government securities, been large?

A. Yes, very large.

Q. 9. Just state what the general nature of those transactions were, without going into particulars.

A. Well, we bought bonds of everybody; and sold to investors, and speculators, and the Government—sold to everybody.

171 Q. 10. Without going into particulars, can you state what would be the average amount of the Government obligations bought and sold by you—say, in May, 1868, and thenceforward?

(Objected to as immaterial. Taken, subject.)

A. They ranged from a quarter of a million to two millions, some days.

Q. 11. Never less than a quarter of a million?

A. Hardly, I think.

Q. 12. Do you recollect the securities in litigation here, purchased by your firm from Suydam & Nason?

A. I recollect there were such securities purchased.

Q. 13. Your attention was called to the matter soon after the purchase took place?

A. Yes, sir.

Q. 14. You have no personal connection yourself in the purchase?

A. No, sir.

Q. 15. How long had the securities in litigation here been past due?

A. I don't know; but they were past due.

Q. 16. Was it usual or customary, up to this time, April 9th, 1869, to buy and sell that class of securities, although the interest upon them had ceased?

(Objected to as immaterial and irrelevant. Taken, subject.)

A. It was.

172 Q. 17. What was the customary rate paid for this class of securities past due—I mean in April, 1869, at the time these securities were bought?

A. Ninety-nine and a half and accrued interest.

Q. 18. This class of bonds was payable at Washington, and nowhere else?

A. Yes, sir.

Q. 19. What was necessary to be done to obtain the money from the Government on this class of securities?

A. They had to be sent on to Washington by express; and the money was remitted in the same way or by mail.

Q. 20. Are you acquainted with this endorsement of Suydam & Nason?

A. I believe the endorsements on the two checks already in evidence were made by Suydam & Nason.

Q. 21. One of the witnesses on the part of the claimants in this case states that in May, 1868, he left a handbill, relating to the loss or theft of these bonds in question, at the office of Vermilye & Co. Have you any recollection of seeing or hearing of any such notice?

A. No, sir.

Q. 22. Was there any record, register, or list of bonds lost, stolen or altered, or of notices in regard to such bonds, kept by your firm in May, 1868, or at any time subsequently?

A. No, sir.

Q. 23. Did you ever make an effort to keep such a list?

A. We did, two or three years previous to that; but we abandoned it. I think we tried it two or three days; I am not sure about that, but it was not long.

173 Q. 24. You abandoned it?

A. Oh, yes; we could not do it. It would have taken about a hundred clerks.

Q. 25. Was it practicable to carry on the business of dealing in Government securities at the time referred to, if you had been obliged to examine lists or records or notices of lost bonds, to ascertain whether the bonds offered for sale were mentioned on such lists?

(Objected to as incompetent and as calling for the opinion of the witness. Taken, subject.)

A. It would have been almost impossible.

Q. 26. For what reason?

A. The immense volume of work. There would have been no profit on it. We would have had to employ so many clerks to get the thing done. We could not have kept a force of clerks, to examine the bonds, on any ordinary allowance.

Q. 27. Are you familiar with the mode in which business was conducted at that time in the purchase and sale of bonds?

A. Yes, sir; in a general way.

Q. 28. Do you know of any firm or dealer in the city of New York who kept a list or register of lost bonds?

(Objected to as immaterial. Taken, subject.)

A. No.

Q. 29. So far as you were concerned, and so far as you have any knowledge, were these bonds in question purchased by your firm in good faith, and without any actual notice of anything wrong in regard to the bonds?

(Objected to as calling for the opinion of the witness, and also as calling for a conclusion of law. Taken, subject.)

A. Yes, sir.

174 Cross examined by Mr. Da Costa:

Q. 30. This class of seven-thirty bonds had coupons attached to them?

A. They had originally; and the last interest was payable with the

bond. I am not sure, though. I have forgotten now; it is so long ago.

Q. 31. Other than that, they had the coupons attached?

A. Yes, previous to the last.

Q. 32. When you speak of having paid 99½ and interest, you mean the interest due up to the maturity of the note?

A. Yes, sir.

Q. 33. After maturity of Government obligations the Government did not pay interest?

A. It ceased at the date of maturity.

Q. 34. On all Government obligations, including these seven-thirty notes in question?

A. Yes, sir.

Q. 35. You do not wish to be understood as saying that these notes were sent to Washington, and you received the money for them?

A. Not by any means.

Q. 36. You were merely speaking of the general way of doing it?

A. Yes, sir.

Q. 37. How many members of the firm or employees were there in Vermilye & Co.'s office in the month of May, 1868?

A. About twenty-two, I should think, including the firm.

175 Q. 38. So that the notice—which one of the witnesses examined on behalf of Adams & Co., has testified to as having been left by him, in the month of May, 1868, at the office of Vermilye & Co., with one of the persons behind the desk—might very well have been left there without you knowing anything at all about it?

A. Yes, sir.

Re-direct:

Q. 39. Was it a usual occurrence to have bonds of this character presented for sale at the counter, although they had matured and ceased to draw interest?

(Objected to as irrelevant and immaterial. Taken, subject.)

A. Yes, it was customary.

LATHAM A. FISH.

W. R. Vermilye.

WASHINGTON R. VERMILYE, being duly sworn, deposes and says:

Direct examination by Mr. Burrill:

Q. 1. You are one of the defendants in this action?

A. So it appears, sir.

Q. 2. How long have you been a member of the firm of Vermilye & Co.?

A. Well, I cannot tell you. I was one of the firm of Carpenter & Vermilye, which commenced forty odd years ago; and I have been in the same concern ever since.

176 Q. 3. When did it become Vermilye & Co.?

A. About 1854, and has retained that name since that time.

Q. 4. Since 1864 your firm has dealt in Government securities of various kinds?

A. Yes, sir.

Q. 5. Have your operations during all that time been large?

A. They have.

Q. 6. Have you any personal knowledge in regard to the purchase of the bonds in question?

A. None whatever.

altered bonds, or of notices having been received in regard to such bonds?

A. They did.

Q. 19. When?

A. I could not say when; but I know they did, prior to May, 1868, not at that time.

Q. 20. How long prior?

A. I could find out, I suppose; but I have no idea. There was a book published at the time I refer to, to which various dealers subscribed. It was soon discontinued.

Q. 21. Your firm abandoned the idea of keeping such a register or list?

A. Yes, sir.

Q. 22. Why?

(Objected to. Taken, subject.)

A. Because it was impracticable.

181 Q. 23. Why do you say it was impracticable to keep and consult such a list?

(Objected to as calling for the opinion of the witness. Taken, subject.)

A. We could not keep a man waiting to examine the bonds before we paid him for them. In fact, we had no time to examine them; it was impossible.

Q. 24. You kept a record of all the bonds which you bought and sold?

A. We did.

Q. 25. That is, to individuals?

A. We did.

Q. 26. Was it a frequent occurrence for bonds of this character to be bought and sold, although they had matured and interest ceased to run upon them?

(Objected to as immaterial. Taken, subject.)

A. It was.

Q. 27. Was it in April, 1869, when you bought these bonds?

A. It was.

Q. 28. There was nothing unusual, was there, in the offer of these bonds for purchase by you at this particular time?

(Objected to as before. Taken, subject.)

A. There was not.

Q. 29. Did you negotiate the purchase of either of these lots of bonds in question from Suydam & Nason?

A. Yes; I can remember I did.

182 Q. 30. Did you negotiate both, or one of them? What is your best recollection about it?

A. I think I did both.

Q. 31. Where were they bought?

A. In our office.

Q. 32. Sold over the counter?

A. Yes, sir.

Q. 33. By one of the firm of Suydam & Nason personally?

A. By Mr. Nason.

Q. 34. Was the rate of 99½ and accrued interest the usual and customary rate for that class of securities at that time?

A. It was.

Q. 35. At the time of this purchase, did you have any notice or knowledge of these bonds having been lost, or stolen, or altered, or of anything wrong in regard to the bonds?

A. I had not.

Q. 36. So far as you know, or were concerned, was this purchase of these bonds made by your firm in good faith?

(Objected to as calling for an opinion and conclusion of law. Taken, subject.)

A. It was.

Q. 37. It has been stated by a witness for the other side that a notice was left at the office of Vermilye & Co., in May, 1868. Did such notice come to your personal knowledge, or have you any knowledge in regard to the receipt of any such notice?

A. I have not.

183 Q. 38. When bonds are bought in the manner in which these bonds were bought, what is the usual course of business pursued by your firm in regard to closing the transaction, in regard to the receipt of the bonds and payment therefor?

A. I usually fix the price of the bonds, and turn them over to one of the clerks, to figure up and pay and make out a bill, and to examine them and finish the trade up.

Q. 39. What do you mean by "finishing the trade up?"

A. Drawing check, and paying for them.

Q. 40. What examination is made, as just stated by you?

(Objected to on the ground that the witness states that he does not make the examination. Taken, subject.)

A. Merely to look at the bonds, to see that there is no name filled in—not written on the back; to see whether they require any endorsement; whether they are negotiable securities on their face.

Q. 41. If they are found negotiable on their face, you buy them?

A. We do.

Q. 42. Is that the customary mode in which transactions in Government securities were carried on at the time referred to?

(Objected to as incompetent. Taken, subject.)

A. By our firm it was.

Q. 43. By other firms?

(Objected to, as before. Taken, subject.)

A. I cannot tell for other firms.

184 Cross-examined by Mr. DaCosta:

Q. 44. The notice that one of the witnesses for Adams & Co. claims to have left at the office of Vermilye & Co., in May, 1868, and which you have testified did not come to your personal knowledge, might have been left there without coming to your personal knowledge?

A. It might.

Q. 45. Did you personally make any examination of these notes?

A. Before buying them?

Q. 46. Yes.

A. I did not.

Q. 47. Were these notes past due when you bought them?

A. They were.

Q. 48. Did you know such fact when you so bought them?

A. I did.

JAMES A. TROWBRIDGE.

Latham A. Fish.

LATHAM A. FISH recalled, and examined by Mr. Burrill.

Q. 1. When was the firm of Vermilye & Co., the defendants in this suit, formed?

A. The firm was formed and commenced business on April 1st, 1869.
Q. 2. Did you know the firm of Suydam & Nason?
A. Yes, sir.
Q. 3. Were they a reputable firm—a firm in good repute?
A. Yes, sir.
185 Q. 4. Members of the Stock Exchange?
A. Yes, sir.
Q. 5. How long had you known them as a firm?
A. I cannot say; for a year or two—a year before that.
Q. 6. Did you know the individual members of the firm?
A. Yes, sir.
Q. 7. Before you knew them as a firm?
A. I had known Harry Nason from a boy.
Q. 8. Was it or not a frequent occurrence that notices or hand-bills of the loss or robbery of Government securities were handed into the office at about the time of these transactions?
A. Yes, sir; it was a frequent occurrence.
Q. 9. How frequent?
A. Very few days without. I should think, on an average, once a week; perhaps oftener.

LATHAM A. FISH.

Donald Mackay.

DONALD MACKAY deposes and says:

Direct examination by Mr. Burrill:

Q. 1. You are one of the defendants in this suit?
A. Yes, sir.
Q. 2. When was this firm of Vermilye & Co. formed, and when did it commence business?
A. On the 1st of April, 1869.
Q. 3. Did you know the firm of Suydam & Nason?
A. Yes, sir.
186 Q. 4. Were they a firm of good reputation?
A. Yes, sir.
Q. 5. Members of the Stock Exchange?
A. Yes, sir.
Q. 6. Did you have anything to do, personally, with this purchase of the seven-thirties in question in this action?
A. No, sir.
Q. 7. Do you know, as a matter of fact, and if so, state, whether it was usual or customary at this time to buy, at your counter, seven-thirty notes after they had become due and the interest on them had ceased?
(Objected to as irrelevant. Taken, subject.)
A. Yes, sir.
Q. 8. Can you state whether notices or handbills of the theft or loss of bonds were frequently sent in to the firm of Vermilye & Co.? and if so, state how frequently.
A. Well, I can say every time there was a robbery; I say as often as once a week. Just about that time there were a good many of them.
Q. 9. From your knowledge of the business, was it or not practicable to carry on the business of buying and selling Government securities, if, before buying them, you had to examine the several lists and notices of bonds lost or stolen, and make a comparison of the numbers?
(Objected to as immaterial and irrelevant and as calling for the opinion of the witness. Taken, subject.)

A. No; it could not be done.

Q. 10. Did the firm of Vermilye & Co. keep any record of the numbers of lost or stolen bonds or secutities?

A. No, sir.

187 Q. 11. Prior to your becoming a member of the firm of Vermilye & Co., had you been in the employ of the former firm?

A. Yes, sir.

Q. 12. For how long a time?

A. Since October, 1861.

Q. 13. The firm of Vermilye & Co., your predecessors, had been in the business for a long time?

A. Yes, sir.

Q. 14. During the time of the transactions in question, were their dealings in Government securities large; and, if so, what would be the average amount of them?

A. They were large since the war commenced.

Q. 15. And continued to be large during all that time?

A. Yes, sir.

Q. 16. What was the average per day?

A. When we were in Wall street, it amounted to millions of dollars—from five hundred thousand to two or three millions of dollars.

Q. 17. So far as you were concerned, and so far as you have any knowledge or information, was this purchase of the seven-thirty notes in question made in good faith by your firm?

(Objected to as calling for a conclusion, and not for a fact. Taken, subject.)

A. They were.

DONALD MACKAY.

188 *Stephen Cahoone.*

STEPHEN CAHOONE deposes and says:

Direct examination by Mr. Burrill:

Q. 1. In April, 1869, were you in the employ of Vermilye & Co.?

A. Yes, sir.

Q. 2. Had you been in the employ of the old firm of Vermilye & Co.?

A. Yes, sir.

Q. 3. For how long a time had you been in the employ of the old firm?

A. From August, 1866.

Q. 4. Were the dealings of the old firm, in Government securities, large?

A. Yes, sir.

Q. 5. Were you familiar with the mode of carrying on the business of dealing in Government securities?

A. Yes, sir.

Q. 6. Did you know of the purchase of the couple of lots of seven-thirty notes in question, in this case, from Suydam & Nason?

A. Merely by seeing the entries in the books.

Q. 7. You know the character of those securities?

A. Yes, sir.

Q. 8. Will you state whether it was usual to buy and sell securities of that character, after they became due and after the interest upon them had stopped?

(Objected to as immaterial and irrelevant. Taken, subject.)

A. Yes, sir.

189 Q. 9. Did you take any personal part in the purchase of these notes from Suydam & Nason?

A. No, sir.

Q. 10. In April, 1869, when the securities were purchased from Suydam & Nason at 99½, as appears from the books, will you be good enough to state what was the usual price or rate for that class of securities?

A. About 99½ and six months' accrued interest.

Q. 11. In April, 1869, who had charge of the Government department in the firm of Vermilye & Co.?

A. It was under my supervision, sir.

Q. 12. Which of the members of the firm had charge of it?

A. Mr. Trowbridge's attention was given to it; but I had charge of the department.

Q. 13. How long had you had charge of that department?

A. I had had it since January, the same year.

Q. 14. Under the old firm?

A. Yes, sir.

Q. 15. And continued it under the new?

A. Yes, sir.

Q. 16. Mention has been made here, by one of the clerks in the employ of Vermilye & Co., as to the examination of Government securities when they were purchased by your house. Will you be good enough to state what the course of business was in regard to the purchase of Government securities, and the examination, if any made, of them at that time?

(Objected to as irrelevant and immaterial, unless confined to the notes in question. Taken, subject.)

190 A. If coupon bonds, the coupons were examined; if the bonds were registered, they were examined in reference to the proper endorsements.

Q. 17. Was any other examination made except to see that the bonds were regular upon their face?

(Objected to as irrelevant and immaterial, unless confined to the notes in question. Taken, subject.)

A. In bonds drawn to order—the only bonds were the seven-thirty notes, which were made to order—we examined them. If they were endorsed, the parties' name should be on the face of the bond.

Q. 18. You made no other examination except to see that the papers were regular on their face?

A. That is all, sir.

Q. 19. When a party came to sell securities at your counter, with whom was the bargain usually made?

A. That would depend upon the amount, sir. If it was a small amount, the other clerks could buy it; if a large amount, either me or Mr. Trowbridge.

Q. 20. How was the rate fixed?

(Objected to as irrelevant and immaterial. Taken, subject.)

A. The rate was fixed by the quotations of the board. They regulated the price.

Q. 21. When the price was agreed upon, what was done with the bonds?

A. The bonds were taken in, counted and examined to the extent I have mentioned, and placed in the drawer, for the purpose of having the numbers taken by the numbering clerk. After the numbers were taken, they were placed in our stock of bonds.

191 Q. 22. When the bonds were placed in the drawer, were the several lots of bonds, bought from time to time, kept distinct?

(Objected to as irrelevant and immaterial. Taken, subject.)

A. Yes, sir.

Q. 23. When was this comparison of numbers, and the entry of the numbers in the book, made?

A. We had two books. We had a book for the entry of the transaction; we had another book to take the numbers in. When the bonds were bought, they were extended on the bond-book in cash and placed in the drawer, and then the numbers taken on the bond-number book.

Q. 24. When were they taken?

(The whole line of this examination objected to as irrelevant and immaterial. Taken, subject.)

A. As soon as we could; before three o'clock, or up to the close of business hours, or later, perhaps.

Q. 25. The same day as the purchase was made?

A. The same day. It would depend upon how busy we were.

Q. 26. During this period, was it or not frequently the case that notices or handbills of the loss or robbery of bonds containing the numbers of the bonds lost or stolen, were handed in to the office of Vermilye & Co.?

A. Yes, sir.

Q. 27. Can you state how frequently this was the case?

A. Very frequently; I should say it was perhaps once a week.

192 Q. 28. Did your firm keep a register or record of the numbers of bonds stated to have been lost or stolen?

A. No, sir.

Q. 29. From your knowledge of the business, was it or not practicable to carry on the business of buying and selling Government securities, if an examination was made on every transaction of the lists or notices which might have been received, and a comparison made with the numbers on those lists, to ascertain whether any of those bonds had been lost or stolen?

(Objected to as irrelevant and immaterial, and as calling for the opinion of the witness. Taken, subject.)

A. No, sir.

Q. 30. You have no present recollection as to your taking personal part in the purchase of these bonds from Suydam & Nason?

A. No, sir.

Q. 31. If you had made the purchase of these bonds yourself, would you have made the entry in the book of purchases and sales?

A. Not necessarily.

Q. 32. Then you might have purchased these bonds, though the entry is made by Mr. Meeker.

A. Yes, sir.

Q. 33. You have no recollection?

A. No, sir.

Q. 34. Do you know Suydam & Nason as a firm of good repute?

A. Yes, sir.

193 Q. 35. So far as you may have been concerned personally, and so far as you have any knowledge, information or belief, was this purchase by the firm of Vermilye & Co. made in good faith?

(Objected to as calling for a conclusion, and not for a fact. Taken, subject.)

A. Yes, sir.

STEPHEN CAHOONE, JR.

J. Howard Latham.

JOHN HOWARD LATHAM deposes and says:

Direct examination by Mr. Burrill:

Q. 1. Are you in the employ of Jay Cooke & Co.?

A. Yes, sir.

Q. 2. How long have you been in their employ?

A. Since their office was opened; I think about six years ago.

Q. 3. Have they, during all that time, been extensive dealers in Government securities?

A. Yes, sir.

Q. 4. Have you been connected with, or did you have charge of, that department of the business; and, if so, for how long a time?

A. All that time, until within about six months.

Q. 5. Are you familiar with the mode and manner in which that class of business, during all that time, has been conducted?

A. Yes, sir.

194 Q. 6. Did the firm of Jay Cooke & Co. keep any record or list or register of lost or stolen bonds?

(Objected to as incompetent and irrelevant. Taken, subject.)

A. No, sir. We may have, if they were sent in to us; but we took no particular notice of them.

Q. 7. You kept no record of them?

A. No, sir; we would keep them before us.

Q. 8. When bonds were offered to you for purchase, did you compare the bonds offered with those lists which may have been handed in?

A. Not unless they were registered bonds.

Q. 9. Explain your answer.

A. The coupon-bonds were payable to bearer; registered bonds were payable to order. If the registered bonds are stolen, a caveat is filed in Washington, and payment is stopped. So we would have to be very careful in the purchase of those bonds.

Q. 10. When a registered bond is brought in to you for sale and appears to be properly endorsed, you buy it?

A. If it came from a first-class bank or that, we should take it without question.

Q. 11. And if it had been stolen, you could not discover it till you sent it to Washington for conversion, exchange, or payment?

A. No, sir; we could not.

Q. 12. If a coupon-bond or registered bond were presented to you, apparently endorsed by the proper parties and on its face regular, you would purchase it?

A. No, sir; not without careful examination, if it was a registered bond—careful examination of the endorsements.

195 Q. 13. You made no other examination than to see if the endorsement was correct?

A. We examined the whole thing: if it was a coupon-bond, to see that it was not an endorsed coupon-bond, bond with names on it, and that the coupons were all correct; if it was a registered bond, we would read the name of the party to whom it was issued by the Department, to see if the endorsement on the back corresponded with its owner's name, and if the signature was witnessed in the proper manner by the proper form.

Q. 14. To see if it was made negotiable?

A. Yes, sir.

Q. 15. You made no other examination than that?

A. No, sir.

Q. 16. Would it have been practicable to have carried on the business of buying and selling Government securities, if, before the purchase, you had been obliged to compare the numbers of the bonds presented with lists and notices?

(Objected to as irrelevant and immaterial, and as calling for the opinion of the witness. Taken, subject.)

A. It would have been impossible.

Q. 17. You know that the seven-thirty notes, after they became due, ceased to draw interest?

A. Yes, sir.

Q. 18. Can you state, as a matter of fact, that, after they had ceased to draw interest, they were still bought and sold?

(Objected to as immaterial and irrelevant. Taken, subject.)

A. Yes, sir.

196 Q. 19. Do you know about what was the rate at which they were bought and sold, after they had ceased to draw interest?

A. I know they were at a discount; I don't know exactly.

Q. 20. Enough to cover the transportation to Washington and back?

A. Yes, sir.

Q. 21. You have known this firm of Vermilye & Co.?

A. Yes, sir.

Q. 22. Ever since you have been in the business in New York?

A. Yes, sir.

Q. 23. Are they a house in good standing?

A. The best, sir.

Q. 24. Was it or not a frequent occurrence that hand-bills or notices of bonds lost or stolen, and containing the numbers and descriptions of such bonds, were handed into your house?

A. Very often, sir.

Q. 25. How frequently?

A. We have never paid much attention to them. About once a week; I would not be certain.

J. HOWARD LATHAM.

197 U. S. circuit court for the southern district of New York.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, Donald Mackay, Latham A. Fish, and Adams Express Company.

Counsel for Vermilye & Co. then proposed to call Messrs. Fisk & Hatch, Howes & Macy, Clark, Dodge & Co., and John J. Cisco & Co., all of whom were large dealers in United States securities at the times of the transactions in question. And the counsel for Adams Express Company then admitted that these gentlemen, if called, would testify that seven three-tenths notes continued to be bought and sold after they had become due and interest had ceased thereon; that it was not customary for dealers in Government securities to keep records or lists of the numbers or description of bonds alleged to have been lost, stolen, or altered, or to refer to such lists before purchasing such securi-

198 ties; that, in their judgment, it would be impracticable to carry on the business of dealing in Government securities, if it were

necessary to resort to such lists and make such examination previous to purchase; and that the purchase of the notes in controversy by Vermilye & Co. was made in the ordinary and usual mode in which such transactions were conducted; and that the firm of Suydam & Nason was a firm in good standing and repute. But the said counsel for the Adams Express Company at the same time take and reserve the same objections to the admissibility of all of such testimony as have been taken to similar testimony already taken by Vermilye & Co.

Counsel for Vermilye & Co. therefore abstain from introducing any further testimony, on the ground that the same would be cumulative.

Dated New York, Nov. 21, 1871.

BLATCHFORD, SEWARD, GRISWOLD & DACOSTA,
Solicitors for Adams Express Company.
CHARLES D. BURRILL,
Solicitor for Vermilye & Co.

199 United States circuit court, southern district of New York.

THE UNITED STATES
versus
WASHINGTON R. VERMILYE ET AL., IMPLEADED with Adams Express Company. } In equity.

It is hereby stipulated that the eight 7.30 United States Treasury notes now in the custody of the clerk of this court in pursuance of the interlocutory decree entered herein on the 19th day of July, 1870, be, and the same are hereby, offered and put in evidence on behalf of the respective defendants; that five of said notes numbered respectively 143625, 48837, 48838, 48839, 48840, are for one thousand dollars each, and the three remaining said notes, numbered respectively 172470, 234571, and 37209, are for one hundred dollars each; that the five one thousand dollar notes are all alike, excepting their numbers and letters; and the three one hundred dollar notes are also all alike excepting their numbers and letters.

200 The following is a copy of one of the one thousand dollar notes, both front and back:

[48840.
1,000.] INTEREST TWENTY CENTS PER DAY. [1,000.
D.

Three years after date, the United States promise to pay to the order of one thousand dollars, with interest at seven and three-tenths per cent., payable semi-annually in lawful money. [L. S.]

Washington, June 15th, 1865.

F. E. SPINNER,
Treasurer of the United States.

S. B. COLBY,
Register of the Treasury.

1,000.] [1,000.

TREASURY DEPARTMENT.

D. 48840.] (Act of March 3d, 1865.)

(Across the face:) The Government reserves the right of paying in coin the interest on this note, at the rate of six per cent. per annum.

(On right margin:) 5 coupons attached. Last six months' interest payable with note. Prior instalments payable only on presentation of coupons therefor.

(On back:) 1,000. Pay to bearer. At maturity convertible at the option of the holder into bonds redeemable at the pleasure of the Government at any time after five years and payable twenty years from July 15th, 1868, with interest at six per cent. per annum, payable semi-annually in coin. 1,000.

The following is a copy of one of the one hundred dollars notes, both front and back:

201100.]

Three years after date, the United States promise to pay to the order of one hundred dollars, with interest at seven and three-tenths per cent., payable semi-annually in lawful money.
100.] Washington, July 15th, 1865. [100.
A. 37209.

F. E. SPINNER,
Treasurer of the United States.

S. B. COLBY,
Register of the Treasury.

Treasury Department, act of March 3d, 1865.

(On upper right corner:) 37209. A. 100.

(On left margin:) Interest two cents per day.

(Across the face:) The Government reserves the right of paying in coin the interest on this note, at the rate of 6 per cent. per annum.

(On right margin:) 5 coupons attached. Last 6 months' interest payable with note. Prior instalments payable only on presentation of coupons therefor.

(On back:) 100. Pay to bearer. At maturity convertible at the option of the holder into bonds redeemable at the pleasure of the Government at any time after five years, and payable twenty years from July 15, 1868, with interest at six per cent. per annum, payable semi-annually in coin. 100.

(Across the above:) 100.

Dated New York, December 3, 1873.

(S'g'd) CHARLES D. BURRELL,
Solicitor for Def'ts Vermilye et al.

(S'g'd) BLATCHFORD, SEWARD, GRISWOLD & DA COSTA,
Solicitors for Def'ts Adams Express Co.

202 (Endorsed:) U. S. circuit court. The United States against Vermilye et al. Stipulation. Blatchford, Seward, Griswold & Da Costa, sol'rs for def'ts Adams Express Co., 29 Nassau street, New York.

Let the within stipulation be filed nunc pro tunc as of December 3d, 1872.

Jan'y 27, 1873.

(S'g'd) SAM'L BLATCHFORD, *D. J.*

Filed nunc pro tunc as of December 3d, 1872.

203 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday, the fourth day of December, in the year of our Lord one thousand eight hundred and seventy-two; present, the honorable Samuel Blatchford, circuit judge.

THE UNITED STATES
vs.
WASHINGTON A. VERMILYEA ET AL. AND the Adams Express Company.

The above cause coming on for final hearing, upon pleadings and proofs,

Mr. C. A. Seward is heard in behalf of the Adams Express Company, Mr. John E. Burrill is heard in behalf of Vermilye & Co., Mr. DaCosta is heard in reply.

Cur. adv. vult.

204

205 U. S. circuit court.

THE UNITED STATES
vs.
WASHINGTON R. VERMILYE AND OTHERS, composing the firm of Vermilye & Co., and the Adams Express Company.

BLATCHFORD, *J.*:

The bill in this case sets forth that the defendants, Vermilye & Co., claim to own five of the obligations of the United States, known as seven-thirty notes, for $1,000 each, issued June 15th, 1865, and three of such notes for $100 each, issued July 15th, 1865; that such eight notes were sent by Vermilye & Co. to the plaintiffs for payment or redemption, Vermilye & Co. claiming that they purchased said notes in good faith and for a valuable consideration, without notice or suspicion that the seller was not the owner thereof; that the defendants, the Adams Express Company, likewise claims to be the owners of all of said notes, and that the same were stolen from it about May 22d, 1868, and that it never parted with the title to the same; that each of
206 such claimants has notified the plaintiffs not to pay or deliver the notes to the other; that the plaintiffs have always been willing to deliver the notes and to pay the moneys secured thereby to the person lawfully entitled to receive the same; that they offer to deliver the same into this court; and that they do not collude with either claimant, and have not brought this suit at the request of either or both, and have not been indemnified by either or both. The prayer of the bill is that the defendants may interplead and settle their rights to the notes and to

the money secured thereby, and that the plaintiffs may be at liberty to deliver the notes to this court; and that the defendants may be enjoined from commencing any suit against the plaintiffs touching the premises; and that the plaintiffs, upon the payment into court of such amount, and procuring the defendants to interplead, may be discharged of all liability to the defendants in the premises.

The answer of Vermilye & Co. avers their ownership of the
207 notes, and denies that the Adams Express Company has any interest in or title to them. It avers that the notes were purchased and received by them in the ordinary course of business, at their banking-house in the city of New York; that at the time of said purchase, they paid therefor the full value of the notes in said city; that they so purchased and paid for the same in good faith, and without any knowledge or notice that the parties from whom the same were purchased were not the owners thereof, and lawfully entitled to the same, and in the full belief that said persons were such owners and so entitled; that they forwarded the notes to the Secretary of the Treasury at Washington, for redemption and payment, the notes having then become due, and for no other purpose; that it was the duty of the plaintiffs to have redeemed and paid the notes to them or to have returned them to them; and that they demanded a return of them from the plaintiffs before the commencement of this suit. The answer asks that the court will adjudge that Vermilye & Co. are the owners of the notes, and entitled to recover and receive the same or the amount
208 due thereon.

The answer of the Adams Express Company denies the ownership of Vermilye & Co., and that they purchased the notes in good faith, and for a valuable consideration, without notice or suspicion that the seller was not the owner thereof. It sets up ownership in the company, and avers that the company is a carrier and forwarder of money-packages, for hire; that it was so in May, 1868, between New Albany, in Indiana, and the city of New York; that on the 19th of May, 1868, the First National Bank at New Albany, Indiana, owned one of the $1,000 notes; that on that day, and at that place, the cashier endorsed said note as follows: "Pay Secretary of the Treasury for redemption.—W. Mann, cas.," or "pay Secretary of the Treasury for conversion.—W. Mann, cas.;" that the note so endorsed was placed and secured in an envelope, which was addressed to the Secretary of the United States at Washington; that on the same day, the package containing the note was delivered to the company for transportation by it to its address; that while the package was in
209 the possession of the company as carrier, it was feloniously, and with force and arms, taken from the possession of the company, by some unknown persons, not through any negligence of the company; that the note subsequently appeared in circulation, but not bearing with legible distinctness such endorsement, but yet bearing traces of it sufficiently legible to indicate to any one conversant with such notes that its negotiability had been restricted by an endorsement which had been attempted to be obliterated; that the fact of such attempted obliteration was and is plainly perceptible on the note, and was the cause of the refusal of the Secretary of the Treasury, in the first instance, to redeem or convert it; and that the company has fully paid the bank for the note, and is entitled to its possession, and to be paid the amount due on it. The answer prays for a decree to that effect. It also sets up that on the 21st of May, 1868, the First National Bank of Clarksville, Tennessee, was the owner in its own right or as depositary of the other seven notes; that those notes endorsed by its cashier or their owners

were securely enveloped and addressed to B. Seaman, cashier, New York, and the package was delivered to the company for transportation to New York; that such package was feloniously taken from the custody of the company at the same time, and under the same circumstances, with the package from New Albany; that the endorsements upon the notes were attempted to be obliterated in the same manner, and to the same extent, and no more, as in the case of the note from New Albany, and they came to Vermilye & Co. in the same manner as that note; and that the company has fully paid the Clarksville Bank for the notes, and is entitled to their possession and to the amount due thereon. It prays for a decree to that effect. It also avers that Vermilye & Co., prior to receiving the notes, were notified by the company of the fact of such larceny, and were furnished by it with the numbers of the notes, and of the series thereof, and were fully notified thereby, and, also, by the appearance of the notes, that the same had lost their negotiable character, and were tainted in their title thereto, in the hands of those who passed them to Vermilye & Co.; and that if Vermilye & Co. parted with value for the notes, they did so in violation of the notices given to them by the company of its property in the notes, and without the exercise of ordinary care and scrutiny and with full knowledge from the appearance of the notes that they had been tampered with.

This case was brought to hearing on the pleadings in July, 1870, and a decree was then made to the effect that the bill is properly filed; that the defendants do interplead and settle the matters in controversy herein between themselves; and that, in the mean time, and until the further order of the court, the notes in controversy be deposited with the clerk of this court; that the costs of the United States be paid by the party in whose favor judgment final be entered herein; and that the consideration of all questions of costs as between the defendants, and all other questions and directions, be reserved until the trial of the matters in controversy between the defendants.

The notes in question were all of them issued under the authority of the act of March 3d, 1865. (13 U. S. Stat. at Large, 468.) They all of them bear on their faces the words, "Act of March 3d, 1865." The New Albany note, one for $1,000, and the four Clarksville notes for $1,000 each, bear date June 15th, 1865. The other three Clarksville notes, for $100 each, bear date July 15th, 1865. The $1,000 notes read, on their faces, in this way, in engraving, "Interest twenty cents per day. Three years after date the United States promise to pay to the order of one thousand dollars, with interest at $7\frac{3}{10}$ per cent., payable semi-annually in lawful money. Washington, June 15th, 1865. Treasury Department. Act of March 3d, 1865." They also bear the signatures, on their faces, of the Register of the Treasury and of the Treasurer of the United States. On the face of each are the words, in engraving: 5 coupons attached. Last 6 months' interest payable with note. Prior instalments payable only on presentation of coupons therefor;" also the words, in engraving, "The Government reserves the right of paying in coin the interest on this note, at the rate of six per cent. per annum." On the back of each note are the words, in engraving, "Pay to bearer," in a panel, with a blank space underneath, in the panel, in which words could be written. On the back of each note are also the words, in engraving, "At maturity, convertible, at the option of the holder, into bonds redeemable, at the pleasure of the Government, at any time after five years, and payable twenty years from June 15th, 1868, with interest at six per cent. per annum, payable

semi-annually in coin." The $100 notes differ from the $1,000 notes only in having the words "two cents" instead of "twenty cents;" the words "one hundred" instead of "one thousand;" and the words "July 15th" instead of "June 15th."

The fact of the larceny of the notes from the possession of the express company, and their ownership by the bank, as set up, is fully proved. They were stolen during the night of the 22d May, 1868,
214 out of a railroad car, the iron safe in which they were being taken away with its contents, after the messenger in charge of it had been knocked senseless by the robbers. On the 29th of May, 1868, a printed handbill advising of the stealing of the New Albany note as a United States 7-30 note for $1,000, second series, act of March 3d, 1865, and giving its number, was delivered to a person behind the counter of Vermilye & Co., in their office in New York. This handbill cautioned all persons against receiving or negotiating the note, and stated that the express company claimed the right to recover its possession, and that it was endorsed, "Pay Secretary of the Treasury for redemption. W. Mann, cashier." The handbill purported to be issued by the president of the express company, and was dated New York, May 28th, 1868. On the 5th of June, 1868, another printed handbill dated Cincinnati, May 28th, 1868, advising of the stealing of the New Albany note as a United States 7-30 note for $1,000, second series, issued under the act of March 3d, 1865, and endorsed as before mentioned, and giving its number, and of the four Clarksville notes, as United
215 States 7-30 bonds of $1,000 each, June 15th, and giving their numbers and letters, and of the three $100 Clarksville notes as United States 7-30 bonds of $100 each, dated July 15th, 1865, and giving their numbers and letters, was delivered to a person behind the counter of Vermilye & Co., in their office in New York. This handbill purported to be issued by officers of the express company, and contained a like caution and statement as before mentioned, in regard to the notes specified in it.

On the 22d of June, 1868, the Treasury Department issued a circular limiting the time for the conversion of the seven-thirty notes into bonds, but not extending the time during which the notes not presented for conversion would draw interest, beyond the date of their maturity. The time for the conversion of the notes maturing, June 15th, 1868, was extended to and including July 15th, 1868, and the time for the conversion of the notes maturing, July 15th, 1868, was extended to and including August 1st, 1868. The bonds to be issued in exchange for the notes were to bear interest from July 1st, 1868, and the interest on the
216 notes surrendered in exchange was to be calculated accordingly.

In July, 1868, the Adams Express Company filed in the Treasury Department a caveat consisting of the before-named hand-bill, dated Cincinnati, May 28th, 1868. It was delivered to the Department with a letter from the office of the company at New York, dated July 20th, 1868, to its agent at Washington, which letter requested the agent to have the note mentioned in the handbill caveated at the Department. They were caveated by entering in a book in the Department, under proper heads, the fact that they were seven-thirties, and their dates of issue, numbers, and amounts, with the fact that they were "stopped," and the name of the company as the person filing the caveat.

In June and July, 1868, the company paid to the two banks, respectively, the entire value of the stolen notes.

The notes when stolen, and when they came into the possession of

Vermilye & Co., did not have the name of any person filled into the blank spaces on their faces, after the words "order of." The
217 New Albany note had, when stolen, written across its back one or the other of the two forms of words set forth in the answer of the company in that behalf. There is no satisfactory evidence that anything was written on the back of any of the Clarksville notes.

On the 9th of April, 1869, Vermilye & Co. purchased at their office from Suydam & Nason, a reputable firm, members of the New York Stock Exchange, the New Albany note and the four $1,000 Clarksville notes, paying therefor a sum calculated at the rate of 99½ per cent. on the principal, with the addition of the six months' unpaid interest on such principal. On the 12th of April, 1869, Vermilye & Co. made a like purchase from the same firm, for a like price, of the other three Clarksville notes.

On the 14th of April, 1869, Vermilye & Co. presented the eight notes at the Treasury Department for redemption. They were not redeemed. In reply, the Department informed Vermilye & Co. that the notes were all of them claimed by the Adams Express Company; and further, in regard to the five $1,000 notes, that their general appearance war-
218 ranted the belief "that the payee's name had been extracted from the face of the note."

It is in evidence that it was usual for seven-thirty notes to be bought and sold in the market after their maturity, and after, by such maturity, interest had ceased to be payable on them; and that the notes in question were purchased by Vermilye & Co. in the usual mode in which such transactions were conducted. No mala fides can be imputed to Vermilye & Co. in respect of the purchases except such as grew out of the fact that they purchased the notes so long after their maturity, that the handbills referred to were delivered to them, and that the notes, some or all, bore appearances which, as to some of the notes, attracted the notice of the officers of the Treasury Department, on their finding that the notes were notes which had been caveated on their books.

There is no evidence as to what was visible on the faces or backs of the notes, when they were received by Vermilye & Co., or by the Treasury Department, in respect to written matter partially obliterated, except the remark in the letter of the Department, of April 14th, 1869.
219 to Vermilye & Co., in regard to the five $1,000 notes, that "the general appearance of the notes warrants the belief that the payee's name has been extracted from the face of the notes." As it is not shown or claimed that the name of any payee was ever inserted in the blank on the face of any of the notes, this remark has no meaning. In the absence of insertion of any names in such blanks, the notes were, all of them, in the same condition as if payable to bearer and were therefore negotiable by delivery; and the writing of anything on the backs of the notes, while the blanks after the words "order of" were not filled up with the names of payees, did not amount to an "endorsement" on or of the notes, in the sense of that word, in the law merchant, so as to restrict the negotiability of the notes, or to make them non-negotiable by delivery merely. (Wookey v. Pole, 4 Barn. & Ald., 1; White v. Vermont & Mass. R. R. Co., 21 Howard, 575; Mercer County v. Hackett, 1 Wallace, 83; Murray v. Lardner, 2 Id., 110; Saunders v. Bacon, 8 Johnson, 485; Tappan v. Ely, 15 Wendell, 362.
And these doctrines apply to these notes issued by the United
220 States in like manner as if they were the notes or bonds of a corporation or of an individual. (Texas v. White, 7 Wallace, 700; Texas v. Hardenberg, 10 Wallace, 68.)

But while Vermilye & Co., if they purchased these notes in good faith before their maturity, without notice of any defect of title in the sellers, might be protected and be held to have acquired the title to the notes, yet a very different question is presented when it appears, as it does, that the notes were, all of them, purchased after their maturity. When they were so purchased, the time for their conversion into bonds had long passed. They were then merely overdue obligations, payable in lawful money. A person who takes a bill or note, which on the face of it is overdue, cannot claim the privileges which belong to a bona-fide holder without notice; and if he chooses to receive it under such circumstances, he takes it with all the infirmities belonging to it, and is in no better condition than the person from whom he received it, and takes nothing but the actual right and title of his
221 vendor. (Andrews v. Bond, 13 Peters, 65, 79; Goodman v. Simonds, 20 How., 343, 365, 366; Texas v. White. 7 Wallace, 700, 735; Texas v. Hardenberg, 10 Wallace, 68, 90.) The last two cases cited show that these doctrines apply to securities issued by the United States. In Texas v. White, the court say that the known usage of the United States to pay all bonds as soon as the right of payment accrues, required the application of the rule respecting overdue obligations to bonds of the United States which have become redeemable. The right to convert into bonds the seven-thirty notes which matured June 15th, 1868, expired July 15th, 1868, and the right to convert into bonds the notes which matured July 15th, 1868, expired August 1st, 1868. The notes therefore, after those dates, remained in the hands of any holder of them, good only for the principal secured by them, and for unpaid interest up to the date of their maturity, as expressed on their face. The holder of them was losing interest on his money by holding them. He could use them only for what their
222 value was, principal and interest, at their maturity. They were thus, in fact, less valuable to their holder than an ordinary promissory note of a solvent maker would have been after its maturity. This condition of these notes is shown by the fact that Vermilye paid for them one-half of one per cent. less than their principal, with the addition of the unpaid interest up to maturity. The fact that they continued to be bought and sold after their maturity, and after interest had ceased on them, did not make them any the less overdue obligations, or relieve them from the operations of the rules of law in regard to such obligations. Vermilye & Co. still took the risk of the title of the vendor. There may have been many reasons, in respect to particular notes, why they passed in the market after maturity, and why the interest on the money represented by them was being lost to the holder. It does not necessarily follow that all of such notes had been stolen, so as to establish such usage as a usage to deal in stolen notes after maturity, even if such usage could be of
223 any force. We have no evidence of the extent of the dealing in such notes after maturity, as compared with the entire amount of the notes issued. With the known usage of the Government to pay its obligations at maturity, and the loss of interest and the rejection of the privilege of conversion, all of which facts were apparent to Vermilye & Co. by inspection of the notes, there is every reason for holding them to the rule that they took nothing but the actual right and title of their vendor. That was nothing but the title of the thief. No principle applicable to the protection of those who deal in negotiable securities before their maturity requires that these notes, in the position they occupied after their maturity, should be regarded as other than over-

due obligations. Mr. Trowbridge, one of the defendants who negotiated the purchase of the notes in question, testifies that when he bought them he knew they were past due. They had been past due from nine to ten months. In connection with this fact it is not inapt to remark
224 that whatever may be said in regard to holding a party bound by such notice as was given to Vermilye & Co. in this case, in respect to dealing in Government securities, such as these notes, before their maturity, it is not at all unreasonable to regard such notice given June 5th, 1868, in respect to securities which would become and which became due, some June 15th, 1868, and the rest July 15th, 1868, as a good notice in respect to dealing in the particular securities named in the notice after they became overdue.

There is no force in the suggestion that the notes in question were a part of the currency of the country, and were money in the same sense as bank-notes. They were issued under the act of March 3d, 1865, (13 U. S. Stat. at Large, 468,) and so state on their faces. The 3d section of that act expressly provides that nothing contained in that act shall be "construed as authorizing the issuing of legal-tender notes in any form," although a previous part of the 3d section had provided that all the provisions of the act of June 30th, 1864, (Id., 218,) which were
225 applicable to the obligations to be issued under the act of 1865, should apply to them. The reason for this evidently was that the 2d section of the act of 1864 provided that certain seven-thirty notes authorized by it, and to be made payable, principal and interest, in lawful money at maturity, not exceeding three years from date, should be a legal tender to the same extent as United States notes for their face value, excluding interest; and it was intended that the seven-thirty notes to be issued under the act of 1865 should not be a legal tender. The 1st section of the act of 1865 shows that the seven-thirty notes issued under that act were only evidences of the indebtedness of the United States for money borrowed by it.

It is objected, on the part of Vermilye & Co., that the express company has no title to or interest in the notes other than that which arises from its having paid the amounts of the notes to the banks, and that there is no evidence of any transfer to the company of the titles of the banks, or of any other person to the notes. The company had
226 these notes in its possession as a carrier for hire. In virtue of that relation it had such a special property in them that it could maintain an action to recover them against the thief. If so, no good reason is perceived why it could not also maintain an action to recover them against Vermilye & Co., if they were found in the hands of Vermilye & Co., after having been taken by the latter under the circumstances shown in this case. This being so, the company ought to be allowed to rely on such special property as against Vermilye & Co., when it is shown that Vermilye & Co. have no better title than the thief who stole the notes from the company. The company was clearly liable to the bailors for the loss of the notes; and when it is shown, in addition to such special property of the company, that it has paid the value of the notes to the bailors, in discharge of such liability, it must be held that in equity there has been an assignment to the company of all the title of the bailors to the notes. The facts proved are sufficient to establish the right of the company as against Vermilye & Co.
227 to receive payment of the notes from the United States and to protect the United States in paying the notes to the company.

There must be a decree in favor of the company.

Clarence A. Seward and Charles M. DaCosta for the Express Company; John E. Burrill for Vermilye & Co.

(Endorsed:) U. S. circuit court. The United States vs. Washington R. Vermilye & others. Decision. Dec. 27th, 1872. Filed Dec. 27, 1872.

228

229 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the third day of February, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Samuel Blatchford, circuit judge.

THE UNITED STATES OF AMERICA
versus
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, DONALD MACKAY, LATHAM A. FISH, and ADAMS EXPRESS COMPANY. } In equity.

An interlocutory decree having been heretofore entered in the above-entitled suit on the 19th day of July, 1870, by which, among other things, it was ordered, adjudged, and decreed that the bill of interpleader filed herein was properly filed, and that the defendants herein do interplead and settle the matters in controversy in this suit between themselves, and that in the meanwhile, and until the further order of this court, the United States 7.30 Treasury notes in controversy be deposited with the clerk of this court, and that the costs of the United States of this suit up to said 19th day of July, 1870, to be taxed, be paid by the party

230 in whose favor judgment finally should be entered herein; and the said defendants having interpleaded, and the cause having been brought on for final hearing upon the pleadings and proofs of the said defendants as between each other; and after having heard John E. Burrill, of counsel for the defendants, Washington R. Vermilye, James A. Trowbridge, Donald MacKay, and Latham A. Fish, and Clarance A. Seward and Charles M. Da Costa, esquires, of counsel for the defendants, The Adams Express Company, and mature deliberation having been had, it is ordered, adjudged, and decreed, and this court, by virtue of the authority vested in it, doth order, adjudge, and decree as follows:

First. That the defendants, the Adams Express Company, are entitled to the said seven-thirty United States Treasury notes mentioned and referred to in the pleadings herein, five of which are for the sum of one thousand dollars each, and respectively numbered Nos. 143,625, 48,837, 48,838, 48,839, and 48,840, and dated June 15th, 1865, and the remaining three of which are for the sum of one hundred dollars each, and respectively numbered 172,470, 37,209, and 234,571, and all now in the custody of the clerk of this court, in pursuance of the terms of the interlocutory decree aforesaid, and are entitled to be paid the amount

231 due on the same by the United States of America upon surrendering the same to the Secretary of the Treasury of the United States of America.

Second. That the clerk of this court do deliver the said several United States Treasury notes to the said defendants, the Adams Express Co., or their solicitors herein.

Third. That the costs of the United States of America to be taxed be paid by the said defendants, the Adams Express Company.

Fourth. That the Adams Express Company are entitled to recover of the defendants, Washington R. Vermilye, James A. Trowbridge, Donald McKay, and Latham A. Fish, the amount so to be paid by them as the taxed costs of the United States of America, as well as their own costs to be taxed.

And it appearing to the court that the costs of the United States of America have been taxed at thirty-three $\frac{50}{100}$ dollars, and have been paid by the said defendants, the Adams Express Company; and it
232 further appearing to the court that the costs of the said Adams Express Company have been taxed at two hundred and fifty-nine $\frac{05}{100}$ dollars,

It is further ordered, adjudged, and decreed that the said defendants, the Adams Express Company, do recover of the defendants, Washington R. Vermilye, James A. Trowbridge, Donald Mackay, and Latham A. Fish the sum of two hundred and ninety-two dollars and fifty-five cents.

(Signed) SAM'L BLATCHFORD.

233, 234 United States circuit court for the southern district of New York. In equity.

THE UNITED STATES OF AMERICA
against
WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, Donald Mackay, Latham A. Fish, doing business under the firm name of Vermilye & Co., and Adams Express Company.

To the honorable the Supreme Court of the United States:

The appeal of Washington R. Vermilye, James A. Trowbridge, Latham A. Fish, and Donald Mackay, composing the firm of Vermilye and Company, respectfully showeth, that upon the third (3d) day of September, one thousand eight hundred and sixty-nine, (1869,) the United States of America filed their bill in the circuit court of the United States, for the southern district of New York, against said Washington R. Vermilye, James A. Trowbridge, Latham A. Fish, and Donald Mackay, composing the firm of Vermilye and Company, and the Adams Express Company, in which they alleged that said Vermilye and Company claimed
235, 236 to be the owners of eight obligations of the United States, known as seven-thirty (7.30) notes, five (5) for one thousand dollars each, and three (3) for one hundred dollars ($100) each, and had forwarded them to the plaintiffs for payment and redemption, and that the Adams Express Company likewise claimed to be the owners of all the said notes, which they alleged had been stolen from them; and prayed that the defendants be compelled to interplead and settle their rights to the notes, and that plaintiff, upon delivering said notes to the court, be discharged from all liability in the premises.

The Adams Express Company filed their answer, and therein denied that Vermilye and Company were the owners of said notes, or had any right or interest therein, and alleged that the said Express Company were the owners and in possession (among others) of said notes, and that the same were feloniously and by force, and without negligence on their part, taken from their possession; and prayed for a decree adjudging the said Express Company to be the owners of said notes and
237, 238 entitled to receive from plaintiff the amount due thereon.

Vermilye and Company in their answer denied that Adams

Express Company had any interest or title to the notes, and state that said notes were purchased by said firm in the ordinary course of their business, at their banking-house in the city of New York, in good faith, and for full value paid therefor without knowledge or notice that the sellers were not, but in the belief that they were the true owners thereof, and that said firm forwarded the same to the Secretary of the Treasury for redemption and payment, and for no other purpose, and that it was the duty of the plaintiffs either to have paid the same, or to have returned them to the said defendants, and that they claim to be the owners of said notes, and ask that the court will so adjudge.

That replications were filed to said answers, and that on the nineteenth (19th) day of July, one thousand eight hundred and seventy, (1870,) an order was entered, that said defendants interplead, and settle the matters in controversy between themselves, and that the notes in controversy remain in custody of the clerk of the court, and that the costs
239, 240 of the United States up to the time of said decree be paid by the party in whose favor final judgment might be entered.

That on the third day of February, one thousand eight hundred and seventy-three, a final decree was made and pronounced in this cause, wherein it was in substance adjudged and decreed that the said Adams Express Company were entitled to the said seven-thirty notes, and entitled to receive from the United States payment thereof, and that the said defendants Vermilye and Company were not entitled to the said notes, or to receive payment thereof, and that the United States were entitled to their costs, to be paid by the said Adams Express Company, and that the said defendant Vermilye and Company pay to the said Adams Express Company their costs herein, to be taxed, and which said costs in accordance were taxed, and adjusted at two hundred and fifty-nine dollars and five cents, ($259.05.)

Wherefore the appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully pray that the
241, 242 decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made dismissing said bill of complaint with costs, or such other decree as to the said Supreme Court shall seem just.

Dated 24th day of February, 1873.

CHARLES D. BURRILL,
Solicitor for Appellants.
JOHN E. BURRILL,
Of Counsel for Appellants.

243, 244 (Indorsed:) U. S. circuit court, southern district New York, in equity. The United States of America ag'st Washington R. Vermilye & Co. Copy appeal. Charles D. Burrill, solicitor for appellants. Filed February 24, 1873.

245, 246 United States circuit court.

THE UNITED STATES OF AMERICA
ag'st
VERMILYE AND COMPANY, AND THE ADAMS EXpress Company.

It is agreed that an appeal may be taken by Vermilyea and Company, if so advised, to the Supreme Court of the United States from

the decree entered in the above action, and dated the 27th day of December, 1872, without security, which is hereby waived.

Dated Feb'y 24, 1873.

BLATCHFORD, SEWARD, GRISWOLD & DA COSTA,
Sol'rs for Adams Express Co.
GEORGE BLISS, JR.,
U. S. Att'y.

(Endorsed:) U. S. circuit court. The United States of America vs. Washington R. Vermilyea & others, impleaded, &c. Stipulation that appeal be taken and waiving security. C. D. Burrill, sol'r for Vermilyea & Co. Filed Feb'y 24, 1873.

247, 248 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York.

To the Adams Express Company:

Whereas Washington R. Vermilye, James A Trowbridge, Donald Mackay, and Latham A. Fish, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you the said Adams Express Company, and have filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court at the city of Washinton, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, second circuit, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-three.

(Signed) L. B. WOODRUFF,
Circuit Judge.

249 Circuit court of the United States in and for the southern district of New York.

THE UNITED STATES
against
WASHINGTON R. VERMILYE, JAMES A. TROWbridge, Donald Mackey and Latham A. Fish, appellants, impleaded with Adams Express Company, appellee.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thimothy Donovan, being duly sworn, saith, that on the twenty-eighth day of February, one thousand eight hundred and seventy-three, at No. 59 Broadway, in the city of New York, he served the above-named appellee, Adams Express Company, with a copy of the appeal, and a copy of the citation, filed in this cause with the clerk of the circuit court in and for the southern district of New York, by delivering and leaving said copy of the citation with Isaiah C. Babcock, the treasurer of said Adams Express Company, the said appellees, personally, and by
250 leaving said copy of the appeal for said appellee in the clerk's office of the circuit court aforesaid.

(Signed) TIMOTHY DONOVAN.

Sworn to this 1st day of March, 1873, before me,
GEO. L. INGRAHAM,
[NOTARIAL SEAL.] *Notary Public, N. Y. C'y.*

(Indorsement on cover:)

No. 157. Washington R. Vermilye, James A. Trowbridge, Latham A. Fish and Donald Mackay, appellants, vs. The Adams Express Company. S. New York. C. C. U. S. Filed 21st June, 1873.

IN THE

Supreme Court

OF THE UNITED STATES.

THE UNITED STATES OF AMERICA,

AGAINST

WASHINGTON R. VERMILYE AND OTHERS,

Appellants,

and

ADAMS EXPRESS COMPANY,

Respondents.

POINTS

For Vermilye & Co., Appellants.

JOHN E. BURRILL,

Of Counsel for VERMILYE & CO.

NEW YORK:

DOUGLAS TAYLOR, PRINTER, COR. NASSAU AND FULTON STS.

1874.

IN THE

Supreme Court

OF THE UNITED STATES.

THE UNITED STATES OF AMERICA

vs.

WASHINGTON R. VERMILYE, JAMES A. TROWBRIDGE, DONALD MACKAY, and LATHAM A. FISH, composing the Firm of VERMILYE AND COMPANY,
Appellants,

and

ADAMS EXPRESS COMPANY,
Respondents.

Brief for Appellants.

This was an action of interpleader, and the bill, which was filed in the Circuit Court of the United States, for the Southern District of New York, set forth, in substance, that the appellants, Vermilye & Co., claimed to own five obligations of the United States, known as seven-thirty notes for $1,000 each, issued June 15th, 1865, and three like notes for $100 each, issued July 15th, 1865; and that such eight notes were sent by them to the plaintiffs for

payment or redemption. That Vermilye & Co. claimed that they had purchased said notes in good faith, and for a valuable consideration. That the defendants, the Adams Express Company, likewise claimed to be the owners of said notes; and alleged that the same had been stolen from them about the 22d of May, 1868. That each of the claimants had notified the plaintiffs not to deliver or pay the notes to the other; that the plaintiffs were desirous to pay the moneys secured by the notes to the person lawfully entitled, and to be relieved from liability; and the prayer of the bill, in substance, was that the defendants might interplead and settle their rights to the notes, and to the moneys secured thereby, and that they might be enjoined from commencing any suit against the plaintiffs, touching the premises. (Fols. 5, 6, 7.)

In the Answer of Vermilye & Co. (fol. 13), they admitted that the Adams Express Company claimed to be entitled to some interest in the notes, and had notified the plaintiffs of their claim; but alleged that the claim of the Adams Express Company was unfounded, and that they, Vermilye & Co., were the owners of said securities, having purchased them in the ordinary course of their business at their banking house in New York, and having paid full value therefor in good faith, and without any notice or knowledge of any defect in the title to said notes (fol. 14.)

Vermilye & Co. also set up, that having purchased the notes, and being in possession of them, they forwarded the same to the Secretary of the Treasury, at Washington, for redemption and payment, and for no other purpose; and that it was the duty of the plaintiffs to have redeemeed and paid the same

to them, or to have returned the same to them unredeemed; and the Answer asks that the Court will adjudge that Vermilye & Co. are the owners of the notes, and are entitled to receive the same, or the amount due thereon (fol. 15.)

The Answer of the Adams Express Co. (fol. 8) denies the ownership of Vermilye & Co., or that they purchased the notes in good faith, and for value, without notice, and sets up the ownership of the Adams Express Co., and avers (fol. 9) that such company is a carrier and forwarder of money packages, and that it was so in May, 1868, between New Albany, Indiana, and the City of New York. That on the 19th of May, 1868, the First National Bank at New Albany, Indiana, owned one of the $1,000 notes; that on the 21st of May, 1868, the First National Bank of Clarksville, Tennessee, owned the other seven notes; and that said several notes, secured in two envelopes, addressed to the Secretary of the United States, were delivered to said company for transportation; and that while the packages were in their possession, as such carrier, they were taken from them feloniously, and by force of arms; and that the company had paid said banks for said notes, and was entitled to their possession, and to the amount due thereon (fols. 9 to 12.)

Said Company, in the Answer, also averred, that prior to receiving the notes, Vermilye & Co. had been notified by the Company of the facts of such larceny, and that they also knew by the appearance of the notes that the same had lost their negotiable character; and that if Vermilye & Co. parted with value for the notes, they did so in violation of the said notices, and without the exercise of ordinary

care, and with full knowledge from the appearance of the notes that they had been tampered with. (Fol. 12.)

The case was brought to a hearing on the pleadings, and a decree was made on the 19th day of July, 1870, to the effect that the bill was properly filed, and that the defendants should interplead and settle the matters in controversy between them, and that the notes in controversy should be deposited with the Clerk of the Court, and that the costs of the plaintiffs be paid by the party in whose favor judgment should be entered, and that the consideration of all questions of costs between the defendants, and other questions, be reserved. (Fol. 18.)

The cause came on to be tried between the interpleading parties, on pleadings and proof at a Circuit Court of the United States, held at the City of New York, on the 3d day of December, 1872.

The evidence offered on the part of the Adams Express Co., which was very voluminous and need not be refered to, proved, that the notes in question came into their possession in the manner before stated—that is to say: one on the 19th of May, 1868, from the First National Bank, at New Albany, Indiana, and the other seven from the First National Bank of Clarksville, Tennessee, on the 21st day of May, 1868, and that they were stolen during the night of the 22d May, out of a railroad car; the iron safe in which they were deposited having been taken off, with its contents, after the messenger in charge of it had been knocked senseless by the robbers; and that in June and July, 1868, the Express Company paid the banks the entire value of the stolen notes.

It appeared from the evidence that there were

eight notes, five of which were for the sum of $1,000 each, numbered 143,625, 48,837, 48,838, 48,839, 48,840; and the remaining three were for the sum of $100 each, numbered 172,470, 37,209, 235,471; that the five one thousand dollar notes are all alike, and that the three one hundred dollar notes are all alike; and that each of said notes was issued under the authority of the Act of March 3d, 1865 (13 U. S. Statutes at Large, 468), and that the New Albany note for $1,000, and the four Clarksville notes for $1,000 each, bear date June 15th, 1865, and that the other three Clarksville notes, for $100 each, bear date July 15th, 1865. (See folios 199 to 202, where copies of the notes are set forth.)

The $1,000 notes read on their faces in this way in engraving: "Interest twenty cents per day. Three "years after date, the United States promise to pay "to the order of one thousand "dollars, with interest at $7\frac{3}{10}$ per cent., payable "semi-annually, in lawful money. Washington, "June 15th, 1865, Treasury Department, Act of "March 3d, 1865."

On the face of each are the words, in engraving: "5 coupons attached; last six months' interest pay- "able with note. Prior instalments payable only "on presentation of coupons therefor."

On the back of each note are the words, in engraving: "Pay to bearer," in a panel, with a blank space underneath, in the panel, in which words could be written.

On the back of each note are also the words, in engraving: "At maturity, convertible at the option "of the holder into Bonds, redeemable at the pleas- "ure of the Government, at any time after five "years, and payable twenty years from June 15th,

"1868, with interest at six per cent. per annum, "payable semi-annually, in coin."

The $100 notes differ from the $1000 notes only in having the words, "one hundred," instead of "one thousand," and the words, "July 15th," instead of "June 15th."

See Stipulation and copies of notes, folios 199 to 202.

Evidence was also introduced, on the part of the Adams Express Company, to show that, on the 29th of May, 1868, a printed handbill, dated May 28th, 1868, advising of the stealing of the New Albany note, as a United States seven-thirty note for $1000, second series, Act of March, 1865, giving its number, was delivered to some person behind the counter of Vermilye & Co., in their office in New York (fols. 146–7); and that this handbill cautioned all persons against receiving or negotiating this note (fol. 150); and that on the 5th of June, 1868, another printed handbill, dated Cincinnati, May 28th, 1868, advising of the stealing of the New Albany note, as a U. S. seven-thirty note for $1000, second series, and giving its number; and also of the four $1000 Clarksville notes, as U. S. seven-thirty notes of $1000 each, dated June 15th, and giving their numbers; and of the three $100 Clarksville notes, as U. S. seven-thirty notes of $100 each, and giving their numbers,—was delivered to some person behind the counter of Vermilye & Co., in their office in New York (fols. 146, 151).

The evidence established that when the notes were stolen, and when they came into the possession of Vermilye & Co., the blank spaces in the body of the notes for the name of the payee were not filled up, but that the same were payable to the

order of ( ) blank, and so that there was no payee named in the body of the note. (See Notes, 199, and Decision of the Court, fol. 217 and fol. 220.)

The New Albany note had, when stolen, written across its back one or other of these two forms of endorsements: either "Pay Secretary of the Treasury, for redemption; W. Mann, cashier"—or, "Pay Secretary of the Treasury, for conversion; W. Mann, cashier;" but the evidence does not establish which. There is no evidence that anything was written on the back of either of the other notes. (See Decision, fol. 217, and evidence, fol. 38, fols. 60–63.)

On the 9th of April, 1869, Vermilye & Co. purchased at their office, in the City of New York, from Suydam & Nason, a reputable firm in that city, the New Albany note, and the four $1,000 Clarksville notes, paying therefor a sum calculated at the rate of 99½ per cent. on the principal, with the addition of the six months' unpaid interest; and on the 12th of April, 1869, Vermilye & Co. purchased from the same firm the other notes, paying therefor a like price. (Decision, fol. 217.)

On the 14th of April, 1869, Vermilye & Co. presented the eight notes at the Treasury Department at Washington for redemption, and were then informed that the notes were claimed by the Adams Express Company. (Decision, fol. 218.)

It was proven that it was usual and customary for seven-thirty notes of this description to be bought and sold in the market after their maturity, and after, by such maturity, interest had ceased to be payable on them; and that the notes in question were purchased by Vermilye & Co. in the usual

mode in which such transactions were conducted (Decision, fol. 218.)

In its decision the Court says:

"No *mala fides* can be imputed to Vermilye & Co. "in respect of the purchases, except such as may "grow out of the facts that they purchased the "notes so long after their maturity, that the hand-"bills referred to were delivered to them, and that "the notes, some or all, bore appearances which, as "to some of the notes, attracted the notice of the "officers of the Treasury Department on their find-"ing that the notes were notes which had been "caveated on their books.

"There is no evidence as to what was visible on "the faces or backs of the notes when they were "received by Vermilye & Co. or by the Treasury "Department, in respect to written matter partially "obliterated, except the remark in the letter of the "Department of April 14, 1869, to Vermilye & Co., "in regard to the five $1,000 notes, that 'the gen-"'eral appearance of the notes warrants the belief "'that the payee's name has been extracted from "'the face of the notes.' As it is not shown or "claimed that the name of any payee was ever in-"serted in the blank on the face of any of the notes, "this remark has no meaning." (Decision, fols. 218 to 220.)

With regard to any actual notice to Vermilye & Co., or to any notice to be implied from the sending of the hand-bills; each of the firm of Vermilye & Co. was examined as a witness, and testified that they acted in good faith in the transaction (testimony of Fish, fol. 172–4; of Vermilye, fol. 177; and Trowbridge, fol. 182); and that neither of them ever saw either of the notices or hand-bills, to their know-

ledge. It was proven by the testimony of many witnesses, that there are so many lost bonds, and so many notices or handbills of loss, circulated and distributed, that it would be impossible to carry on business if dealers in Government securities were required to keep a list or record, and before purchasing a negotiable bond, to examine these notices, lists or registers, before making the purchase. (Testimony of Fish, fol. 173; Trowbridge, fol. 181; Mackay, fol. 186; Cahoone, fol. 192; Vermilye, fol. 176; Whiton, fol. 163).

In addition to the witnesses called on these various matters, a stipulation was entered into between the respective counsel, in the words and figures following, to wit:

"Counsel for Vermilye & Co. then proposed to "call Messrs. Fisk & Hatch, Howes & Macy, Clark, "Dodge & Co., and John J. Cisco & Co., all of whom "were large dealers in United States securities at "the times of the transactions in question. And the "counsel for Adams Express Company then admitted "that these gentlemen, if called, would testify that "seven three-tenths notes continued to be bought "and sold after they had become due, and interest "had ceased thereon; that it was not customary for "dealers in Government securities to keep records "or lists of the numbers or description of bonds al- "leged to have been lost, stolen, or altered, or to "refer to such lists before purchasing such secu- "rities; that, in their judgment, it would be im- "practicable to carry on the business of dealing in "Government securities, if it were necessary to "resort to such lists, and make such examination "previous to such purchase; and that the purchase

"of the notes in controversy by Vermilye & Co., "was made in the ordinary and usual mode in which "such transactions were conducted; and that the "firm of Suydam & Nason was a firm in good stand- "ing and repute.

"But the said counsel for the Adams Express "Company, at the same time, take and reserve the "same objections to the admissibility of all of such "testimony as have been taken to similar testimony "already taken by Vermilye & Co.

"Counsel for Vermilye & Co., therefore, abstain "from introducing any further testimony, on the "ground that the same would be cumulative.

"Dated New York, Nov. 21, 1871.

"BLATCHFORD, SEWARD, GRISWOLD & DA COSTA,
Solicitors for Adams Express Company.

"CHARLES D. BURRILL,
"*Solicitor for Vermilye & Co.*"

The Circuit Court, in its decision, forming part of the record, decides:

I. That in the absence of the insertion of any names in the blanks (in the body of the notes), the notes were all in the same condition as if payable to bearer, and were, therefore, negotiable by delivery.

Decision, fols. 219–220.

2. That the writing of anything on the back of the notes, while the blanks after the words "order of" (in the face of the notes) were not filled up with the names of the payees, did not amount to an en-

dorsement on or of the notes, in the sense of that word, in the law merchant, so as to restrict the negotiability of the notes, or to make them non-negotiable by delivery. (Citing numerous cases.)

Decision, fols. 219–220.

3. That while Vermilye & Co., had they purchased those notes before maturity, might be protected, yet inasmuch as the notes were purchased after the period fixed by law for the payment or conversion of said notes into bonds, they could not be regarded as *bona fide* purchasers, on the principle that one who takes a bill or note, which, on the face of it, is overdue, cannot claim the privileges which belong to a *bona fide* holder without notice, and that if he chooses to receive it under such circumstances he takes nothing but the actual right and title of his vendor.

Decision, fol. 220.

4. That the fact that notes of this description continue to be bought and sold after their maturity, and after interest had ceased on them, did not make them any the less overdue obligations, or relieve them from the operation of the rules of law in regard to such obligations, and that Vermilye & Co., in purchasing these notes, took the risk of the title of the vendor.

Decision, fol. 222.

5. That there was no force in the suggestion on the part of Vermilye & Co. that the notes in question were a part of the currency of the country, and

were, therefore, entitled to be placed on a different footing from ordinary commercial paper.

Decision, fol. 225.

6. That, although there was no evidence of any transfer to the Adams Express Co. of the titles of the banks, or of any other person, to the notes in question, yet, that the Adams' Express Co. had a right to recover, either on the ground that they were bailees, and had a special property in the notes, or on the ground that being liable to the bailors for the loss of the notes, and having paid the value of the notes to them in discharge of such liability, they were, in equity, entitled to the same position as if there had been an assignment to the Company of all the title of the bailors to the notes.

Decision, fol. 226.

The Circuit Court thereupon made a decree on the 27th of December, 1872 (fols. 230 to 232), declaring the Adams Express Co. to be entitled to the notes in question, and to the amount due on the same from the United States; that the Clerk of the Court delivered the said notes to the said Express Co., and that the costs of the United States be paid by the Express Co., and that Vermilye & Co. pay to the Adams Express Co. their own costs, and the costs paid to the United States.

From said decree an appeal has been taken by Vermilye & Co. to this Court.

The Points which the counsel for the appellants desires to argue, are:

FIRST.—That the evidence conclusively established the fact that when the notes in question were stolen, and when they came into the possession of Vermilye & Co., the blank spaces for the names of the payees were not filled up, and that there was no writing of any kind on the backs of the Clarksville notes.

SECOND.—That the fact that the time prescribed by law for the payment or conversion of the seven-thirty notes had passed, did not prevent Vermilye & Co. from acquiring a good title to said notes as against the true owners, provided they purchased the same in the ordinary and usual course of business, and without notice of any defect in the title of their vendors, and in good faith.

THIRD.—That the evidence proved that Vermilye & Co. purchased the notes in good faith.

FOURTH.—That the Adams Express Company, not having received any assignment or transfer from the two banks who owned the notes in May, 1868, had no interest in the notes or in the proceeds thereof, and had no claim against the United States, or against Vermilye & Co., in respect thereto.

FIFTH.—That the Circuit Court should have decreed in favor of Vermilye & Co.

POINTS.

First.—The Court below, as appears by the decision (fol. 217), found, that when the notes in question were stolen from the Adams Express Company, and when they came into the possession of Vermilye & Co., the blank in the body of the note for the name of the payee was not filled up, and that the notes were payable to the order of (————————).

This finding is supported by the evidence, and there is no evidence to the contrary. The fact found appears in the notes as set forth in the record (fols. 199–202), and the evidence on the part of the Adams Express Company was to the same effect.

See Statement of Facts.

Second.—The evidence also shows, as the Court below found, that there was no writing on the back of the notes which belonged to the Clarksville, Tennessee, Bank; so that as to all the notes owned by that bank, which comprised all but one note in suit, they were payable to bearer, and were, therefore, negotiable by delivery from hand to hand (fol. 217; see also Testimony, fols. 60, 61–63).

Third.—The only endorsement on the Indiana Bank note was either in these words, "Pay Secretary of the Treasury for redemption," or in these words, "Pay Secretary of the Treasury for conversion." The Court was unable to decide which words were used, as the evidence on this point was equivocal, and there was no mode of determining the fact (Testimony, fol. 38; Decision, fol. 217).

It is claimed that, although the endorsement made or claimed to have been made by *Mr. Mann* on the Indiana bank-note might not be sufficient, in ordinary cases, to restrict the negotiability of these notes, still, that it was the exercise of the right given by the Act of Congress to require either a redemption of the notes or a conversion of the bonds.

We claim that the endorsement of the Indiana Bank note in either of the forms suggested, would not affect the negotiability of the notes themselves. Not being made by the payee named in the notes, they amounted to nothing, for reasons hereinafter stated, because the party making the endorsement was "a stranger." The only effect which could possibly be given to such an endorsement, if it had any binding obligation, would be to hold that the transferee of the note took it subject to the agreement contained in it. The evidence shows, however, that this endorsement, if ever made, had been erased before the notes came to the hands of Vermilye & Co. The latter are not affected by such erasure, because they do

not claim title through any obliteration, erasure, or forgery. The notes were negotiable before the erasure, and they remained so afterwards. In either case the note, on its face, was capable of being transferred by delivery. This endorsement formed no part of the contract between the United States and the bearer of the note, and so long as the note was on its face a contract with the bearer, it matters not what may have been written on the back by some person not a party to the contract.

It is sufficient to say, however, that, if these notes are not commercial instruments in the strict sense of that term, they are still within the class of negotiable instruments, and have all the qualities and incidents of commercial paper, and that the fact that they are under seal does not prevent their being so treated and regarded.

Mercer County *v.* Hackett, 1 Wall, 83.
Murray *v.* Lardner, 2 *ib.*, 110.
Thomson *v.* Lee County, 3 *ib.*, 327.
White *v.* Ver. & Mass. R. R. Co., 21 How. U. S., 575.
2 Redfield Railways, 525.

And that this Court has also decided that the rules of law applicable to such instruments apply to the class of government obligations in which seven-thirty notes are included.

Mercer County *v.* Hacket, 1 Wall, 83–95.
Murray *v.* Lardner, 2 *ib.*, 110.
Thomson *v.* Lee County, 3 *ib.*, 327.

Fourth.—In the absence of the insertion of any names in the blank left in the Indiana note for the names of the payees, the note was, in fact, payable to bearer, and negotiable by delivery.

Brainerd *v.* N. Y. & Harlem R. R. Co., 25 N. Y., 500.
Van Duzer *v.* Howe, 21 N. Y., 531.
1 Parsons' Notes, 33.
2 *Ib.*, 448.
Crutchely *v.* Mann, 5 Taunton, 259.
Greenhow *v.* Boyle, 7 Blatchf., 56.

And the writing which is found to have been placed on the back of the Indiana Bank note, whatever it may have been, did not amount to an "endorsement" in the sense of that word in the law merchant, so as to restrict the negotiability of the note, or to make it non-negotiable by mere delivery.

1. The rules of law applicable to commercial paper apply to the United States seven-thirty notes in question.

White *v.* Vermont & Mass. R. R. Co., 21 How. U. S., 575.
Mercer County *v.* Hacket, 1 Wall., 83-95.
Murray *v.* Lardner, 2 Wall., 110.
Bank of Rome *v.* Village of Rome, 19 N Y., 20.
Brainerd *v.* N. Y. & Harlem R. R. Co., 25 N. Y., 496.
Thomson *v.* Lee County, 3 Wall., 327.

2. The writing on the back was not an "endorsement," which can only be made "by some person named in the instrument as the payee."

Wookey *v.* Pole, 4 Barn. & Ald., 1.
White *v.* Vermont & Mass. R. R. Co., *supra.*
Mercer County *v.* Hacket, *supra.*
Murray *v.* Lardner, *supra.*
Sanders *v.* Bacon, 8 Johns., 485.
Tappan *v.* Ely, 15 Wend., 362.
Commonwealth *v.* Emigrant Bank, 98 Mass., 12.
(Cases above.)

3. The negotiability of the note was not affected by the fact that is was authenticated by the seal of the United States. To hold otherwise, would be to destroy the very object which the United States had in view by the issue of the note. The seal was affixed, not to restrain negotiability, but to authenticate and stamp them as genuine obligations.

Fifth.—The Court below has not found that Vermilye & Co. purchased the notes in bad faith, but on the contrary, concedes that, had the notes not matured, they would have occupied the position of *bona fide* purchasers.

1. The Court says (fol. 218) "No *mala fides* can be imputed to Vermilye & Co., in respect of

the purchases, except such as grew out of the facts that they purchased the notes so long after their maturity, that the handbills referred to were delivered to them, and that the notes, some or all, bore appearances which, as to some of the notes, attracted the notice of the officers of the Treasury Department, on their finding that the notes were notes which had been caveated on their books."

The Court then disposes of the latter point by stating (fols. 218, 219): "There is no evidence as to what was visible on the faces or backs of the notes, when they were received by Vermilye & Co. or by the Treasury Department, in respect to written matter partially obliterated, except the remark in the letter of the Department, of April 14, 1869, to Vermilye & Co., in regard to the five $1000 notes, that 'the general appearance of the notes warrants the belief that the payee's name has been extracted from the face of the notes.'" A glance at the testimony will show that there was not the slightest evidence to justify this unauthorized and gratuitous statement in the letter of the Assistant Secretary of the Treasury of April 14, 1869, and which is set forth at folio 138. The Court had the notes before it at the trial, and had there been anything in their appearance to justify this assertion of the Secretary the Court would have so found. That the remark of the Secretary was gratuitous, is evident from the circumstances under which it was written; and the incorrectness of the statement is proved by the fact stated by the Court, and

which is sustained by the evidence, "that it was not claimed that the name of any payee had ever been inserted in the blank on the face of any of the notes" (fol. 219); and the Court correctly adds, that the remark of the Assistant Secretary, in view of these facts, has no meaning (fol. 219).

2. With regard to the fact that the loss of the notes was published in the papers, and that printed handbills, or notices of the loss, giving a description of the notes, were left at the banking house of Vermilye & Co., we say:—

(a.) That the evidence clearly shows that it would be impracticable to carry on business if, before purchasing a negotiable security, the party is required to examine all notices which may have been sent to him, or all the advertisements which may have been published. This would render it necessary to keep a list or record of all lost or stolen notes—all which may have been, at any time, lost or stolen; because, if the obligation exists at all, there is no limit to it. If the fact that a loss was once published, or a notice once given, to the party who may subsequently buy, is sufficient to charge a party with notice, and to impose the duty of remembering, then this charge and obligation must continue for all time.

In such case the dealer must keep a record, preserve the notices, and examine them before purchasing, which, as before

said, is impracticable. The fact of publication in the newspapers is not *per se* notice, and to hold that it was would expose innocent parties, who may never have seen the publication, to great injury. The danger is none the less with a printed handbill, thrown into a banker's office, or laid on his counter, or delivered to one of his numerous clerks. It may never reach the employer; and if it does, what is he to do with it? Now, in this case, the advertisement and service of hand-bills were made in May, 1868 (fols. 150, 151), and the purchase by Vermilye & Co. was in April, 1869 (fols. 166, 167), almost one year afterwards. In what way were Vermilye & Co. to retain the recollection for this length of time of the fact that such hand-bills had been distributed, or such loss published a year before?

(b.) But, again, an examination of the advertisements and hand-bills will show how incorrect they were, and how far short they fell of giving any notice in this case. The advertisement (fol. 153) was precisely like the first hand-bill left at Vermilye & Co.'s office by McKettrick (fol. 150). These two papers refer only to the property of the Indiana Bank, and they included but one of the notes in suit, viz., No. 143625; the subsequent notice (fol. 150) omits all reference to notes Nos. 48837, 48838, 48839, and 48840.

3. But, again, the fact that such advertisement was made or notice given does not *per se* render the purchase one in *mala fide*. It is, at most, a circumstance to be considered by the tribunal (jury or court) in determining the question of bad faith.

(*a.*) The rule is now well settled, that neither suspicion of a defect of title, nor the knowledge of facts which would excite suspicion in a prudent man, nor even gross negligence, will impeach the title of a purchaser for value. Nothing will do so short of actual bad faith.

There must be guilty knowledge or willful ignorance of the defects in the title to such securities, to impeach the right of a purchaser for value.

Murray *v.* Lardner, 2 Wall, 110.

Goodman *v.* Simonds, 20 How. U. S., 343.

Raphael *v.* Bank of England, 33 E. L. & Eq., 276.

Birdsall *v.* Russell, 29 N. Y., 220.

In 2 Wall., 110, *supra*, Swayne, *J.*, says: "Guilty knowledge and willful ignorance alike involve the result of bad faith. Where there is no fraud there can be no question."

It would not even have been enough if the defendants, when they took the bonds, had the means of knowing that they had been stolen, if they did not know it in fact,

and did not know any circumstances which necessarily and indisputably led to that conclusion.

Raphael *v.* Bank of England, *supra.*

Lord *v.* Wilkinson, 56 Barb., 593.

In Murray *v.* Lardner the Court discuss at length the question as to what constitutes bad faith. "What would excite one man's suspicion might not another's. One thing might look suspicious to one jury, and not to another; it resolves itself into a question of honesty or dishonesty," and then alluding to the volume, constantly increasing, of these securities, in which a large portion of our wealth is invested, say that, while Courts should not so "shape and apply the rule" as to facilitate fraud, "*they should not forget the considerations of equal importance which lie in the other direction.*" The attention of the Court is specially invited to the opinions in this case, and to Goodman *v.* Simonds.

(*b.*) It is also well settled that the principles applicable to commercial paper apply to United States securities like those in question.

White *v.* Vermont & Mass. R. R. Co., 21 How. U. S., 575.

Mercer County *v.* Hacket, 1 Wall., 83–95.

Murray *v.* Lardner, 2 *ib.*, 110.

Thomson *v.* Lee County, 3 *ib.*, 327.

In view of these decisions, inasmuch as the Court has not found that Vermilye & Co. purchased the notes in bad faith; but, on the contrary, held that they purchased the same in open market, and without knowledge of any defect of title, and paid full value therefor; they must be deemed to have purchased the same in good faith, especially as the law presumes that they did so purchase (2 Wall., 110), and the onus rests upon the impeaching party to overthrow the presumption.

Sixth.—We do not suppose that any effort will be made by the respondents to charge Vermilye & Co. with any actual bad faith in the purchase, but at the same time a reference to the testimony on this point may not be out of place.

1. The notes were purchased, part on the 9th April, 1869, and part on the 12th April, 1869, and the customary entries made on the books.

   Whiton, test. defts., fol. 161.
   Meeker, test. defts., fols. 166–7.

2. They were purchased at the market price and paid for at the time, and all the profit which Vermilye & Co. could have made was one-half of one per cent., from which was to be deducted the cost of sending the notes to

Washington, and loss of use of money during the time occupied in conversion. This was small profit for the risk of loss and other hazards incurred.

Meeker, test. defts., fol. 166.
Fish, test. defts., fol 172.

3. They were purchased at their own counter, where they dealt daily to the extent of hundreds of thousands of dollars in United States securities, and from Suydam & Nason, a respectable and responsible house.

Fish, test. defts., fol. 85.
Stipulation, fol. 198.
Mackay, test. defts., fol. 187.
Vermilye, test. defts., fol. 177.
Trowbridge, test. defts., fol. 179.

4. Each of the members of the firm testified that they acted in good faith in the transaction.

5. Cumulative testimony was offered to show that the transaction was conducted in the ordinary and usual mode, and was waived under the stipulation.

Stipulation, defts.' test., fol. 198.

Seventh.—The Court below decided that Vermilye & Co. could not become a *bona fide* holder of the notes so as to cut off the title of the true owner, and that they took no better title than

their vendor had, *because* the time prescribed by law for the conversion or redemption of the seven-thirty notes in question had expired; and the Court relied on the two cases in this Court, Texas *v.* White, 7 Wall, 700, 735, and Texas *v.* Hardenberg, 10 *Ib.*, 68, 90. *It is proved in this case that seven-thirty notes did not lose their marketable or merchantable character, when the period prescribed for conversion or redemption arrived, but that they continued to be bought and sold in the market after that time.*

There was no contradictory evidence on this point, and the fact was assumed to be true both by the Court in its decision and by the counsel. The Court below say that the fact that they were so bought and sold did not render them any the less *overdue*, and that because they were overdue, therefore they lost all ability to protect their purchaser. The reason why Courts have held that the purchaser of paper after its maturity cannot be regarded as a *bona fide* holder, is because the law *presumes* that a note remaining unpaid after maturity is dishonored, and that this is notice that there was something wrong about the paper, and would prevent people from purchasing; and, in short, that the transaction is out of the usual and ordinary course of business. "When a note is overdue, *it being out of the common course of dealing* is alone such a suspicious circumstance as makes it incumbent on the person receiving it to satisfy himself that it is a good one"—"if he omit to do so, he takes it on the credit of the endorser, and must stand in the situation

of the person who was holder at the time it was due."

Brown *v.* Davis, 3 T. R., 80.

"This opinion is now the law."

Chitty on Bills, p. 217.

"A person who takes a bill which *appears on its face to be dishonored*, takes it with all the infirmities belonging to it."

Andrews *v.* Pond, 13 Peters, 79.

"He takes it *as a dishonored bill.*"

3 Kent, 91.

"*When the instrument furnishes evidence that the written promise to pay has been broken*, the party taking the note takes it with a warning that the maker may have some defense."

Newell *v.* Gregg, 51 Barb., 265.

Williams *v.* Matthews, 3 Cow., 260.

Now, when it is proved that this particular class of securities, being the obligations of the Government, do not lose their negotiability when they have matured, but that they are bought and sold, dealt in, and are circulated in the community afterwards as before (no matter for what cause), the reason of the rule referred to ceases to exist, and there is no ground for its application to securities of this description.

There was no such fact proved in the cases in 7 Wallace and 10 Wallace referred to, and we submit that the ruling of the Court below on this point was wrong. These Treasury notes, like all Government obligations, possessed in the minds of many, great intrinsic value, and were eagerly sought after, not only from the

fact that they were government obligations, but from the fact that they were exempt from taxation.

It may be true, as the Court below held, that the seven-thirty notes issued under the Act of March 3, 1865, were not legal tender notes in the same way as the notes issued under the Act of June 30, 1864, but it is no less true that being three year notes, and drawing seven and three-tenths per cent. interest, and in a convenient form, and transferrable by delivery, they circulated from hand to hand, and were a substitute in many respects for money.

But again, we submit that these notes were not past due in the sense in which that term is used to express a *dishonored* note—a note which has been presented and has not been paid, and is the evidence of a broken promise, a pledge unfulfilled.

These notes were not due. By the law under which they were issued and by the very terms of the notes, they were, after the expiration of three years, either payable in currency or convertible into five-twenty bonds, bearing interest at six per cent. per annum, from and after July 15th, 1868. (See the notes, and also 13 U. S. Statutes at Large, page 458.) When the three years had expired these bonds had not matured as notes would have done, because the holder had the option to take his money or to convert it into a bond. That was not the option of the government but the option of the holder, and he was not obliged to exercise his option at the very moment the note matured. The contract was not determined, because the holder had not

exercised his option. There was a difference of opinion among the holders of these securities as to the course to be pursued—whether to take the money or to extend the loan. As said before, it was not necessary to exercise the option at the moment. It is doubtless true, that if the holders, in the exercise of the option, chose to demand a redemption of the note in money, the note ceased to draw interest after its maturity; but this would be merely because the debtor was ready to pay when due, and stood in the position of having tendered the money.

But did the man who chose to convert the note into a five-twenty bond lose his interest? Did he lose anything by the delay in presenting his note for conversion? We say no, that he did not. He was entitled to convert into a bond, payable twenty years from July 15, 1868, with interest from that time. Whenever he chose to call for his bond he was entitled to have it, and to have it as he would have been entitled to have it on the day mentioned in the note. The contract of the government, endorsed on the note, is, that it is convertible into bonds, which bonds are to run either five years or twenty years from June 15, 1868, and shall bear interest payable semi-annually. These bonds are, therefore, to be dated June 15, 1868, which was the maturity of the note, and the interest was to run from that time and to be paid semi-annually therefor. The right of the holder of the note to demand and receive such bonds was secured by the Act of Congress, and could not be limited by any action of the Secretary of the Treasury. We submit

that this is not the case of a dishonored note—a note which has matured, and not been paid. In the case in 7 Wall, 735, the Court seemed to recognize the distinction for which we contend by using this language: "The known usage of the United States to pay all bonds as soon as the right of payment accrues, except where a distinction between redeemability and payability is made by law, and shown on the face of the bonds, requires the application of the rule respecting overdue obligations to bonds of the United States which have been redeemable, and in respect to which no such distinction has been made," (page 735.)

Eighth.—The case failed to show any right or title of the Adams Express Company to the notes in question.

1. The Company did not allege or prove any assignment or transfer to it of the notes, or of the moneys due thereon, or of any interest therein.

2. The Company did not place their right to the notes upon the fact that they were trustees of the notes, and had a special property in them, but upon the fact that they had paid the two banks the amount of the notes, in discharge of their liability as carriers. This payment by the Express Company to the bank was a voluntary payment, and made without any

consideration whatever, except on the theory that the instruments, when lost, were negotiable. If the instruments were not negotiable, then the bank sustained no loss, and had no claim upon the Express Company, and the fact therefore is fairly deducible that the notes were negotiable and transferable by delivery when lost.

3. The Court in its decision, placed the right of the company to recover on the fact that it was a bailee—having special property. Assuming this for the moment, it will be seen that the Adams Express Company ceased to occupy the position of bailee of the property, because that relation had in fact ended, and the Company had discharged all its obligations as bailee by the payment of the money, and had, moreover, as above stated, based its claim to the notes on the fact of payment, and nothing else.

Ninth.—The judgment should be reversed, and a and a decree entered according the note and the money payable thereon to Vermilye & Co.

JOHN E. BURRILL,
Of Counsel for VERMILYE & CO.

United States Supreme Court.

WASHINGTON R. VERMILYE, *et al.*,
Appellants,

vs.

THE ADAMS EXPRESS COMPANY,
Respondent.

Additional Points for Respondent, made after an Interchange of Briefs, and which have been furnished to the Counsel for the Appellant.

Point I.

The Court below based the right of the Adams Express Company herein upon two unassailable grounds:

1. As a common carrier, the Company had a special property in the notes, which entitled it to recover them, or their proceeds, if wrongfully detained.

2. The Company having paid the shippers in accordance with the bill of lading, for the full value of the notes, after their theft, was subrogated to the rights of the shippers, and became their equitable assignee.

The appellants have not found it convenient to notice the first point, or to cite authorities adverse to the second. Their position is this:

"True, the notes were stolen, and you were compelled to make good the loss, and did so, but as the shipper did not make 'any assignment or transfer of the notes' (see *Points* 8, *p.* 30), our title derived from the thief is so superior to the carriers that a Court of Equity will protect it, and in so doing shelter the thief."

If any authorities are needed to support the decision of the Court below, they will be found in 13 *Metcalf*, 99; 13 *Wallace*, 367; 16 *Wallace*, 271; *Angell on Carriers*, 305, § 348.

Point II.

The suggestion on page 21, subdivision (*b*) that "an examination" of the notices of loss served by the Express Company on Vermilye & Co., "will show how incorrect they were, and how far short they fiel of giving any notice in this case;" and that "the advertisement and handbill refer only to the property of the Indiana Bank, and included but one of the notes on suit, viz., No. 143,625; and that the subsequent notice omits all reference to notes Nos. 48,837; 48,838; 48,839 and 48,840" would seem to be illusory.

There were in suit (*Record*, p. 98) five one thousand dollar notes—Nos. 143,625, 48,837, 48,838, 48,839, 48,840, and three notes for $100 each—Nos. 172,470, 234,571, and 37,209.

McKittrick was called as a witness (*Record*, *p.* 73), and testified that he was in the employment of the Express Company; that he served on Vermilye & Co. on the 29th of May, 1868, a notice, of which a copy is marked A, and on June 5th, 1868, a notice, of which a copy is

marked B. Schedule "A" says (*Record*, p. 75): "Among other property stolen were * * * U. S. 7-30 notes, numbered 143,625."

Schedule "B" says (*Record*, *pp.* 75, 76): "The following is a description of some of the property stolen: United States seven-thirty notes, Nos. 143,625, * * for one thousand dollars each; United States seven-thirty bonds of $1,000 each, Nos. 48,837, 48,838, 48,839, 48,840; United States seven-thirty bonds of $100 each, No. 37,209, 172,470, 234,571." The appellants now claim that these notices were defective, because the printed record reads "seven-thirty *bonds*," and not "seven-thirty *notes*." The original record may or not justify the criticism of counsel, but what can be said of a litigant, in a Court of Equity, who says of himself (*Record*, *p.* 87), "I commenced forty odd years ago. Since 1864 I have had large operations in Government securities," and who knew that there was no such thing as a 7-30 *bond*, and that no United States Bonds ever bore more than 6 per cent. interest, and who now seeks to justify his title to a 7-30 note, of the theft of which he had been notified, by saying "the notice was wrong." It said "bond," and so I bought the "note." *A fortiori*, is this true when the appellant's brief (*Points*, *p.* 28, *line* 27,) says "these *bonds* had not matured as *notes* would have done?"

Point III.

"The evidence clearly shows that it would be impracticable to carry on business if, before purchasing a *negotiable* security, the party is required to examine all notices which may have been sent to him." (*Points*, *p.* 20, *subd.* (*a*).)

This begs the question, for the notes in suit being over-due, were not "a negotiable security."

Even if they had been, the "impracticability" of attending to a word of caution could not have deprived that word of its legal effect. Ignorance after knowledge has been communicated, is *ex necessitate rei* willful, and, as *Mr. Justice* SWAYNE said: "willful ignorance" is "bad faith." "I forgot your notice" has not as yet been digested under the title of "Good Defences."

Point IV.

"It is sufficient to say that these notes are within the class of negotiable instruments, and have all the qualities of commercial paper (*Points, p.* 16). "These notes *were not due.* They were *either* payable in currency *or* convertible into bonds. When the three years had expired, THESE BONDS had *not matured*, as NOTES would have done. because the *holder* had an option" (*Points, p.* 28). "The endorsement amounted to nothing, because the party making the endorsement was *a stranger*" (*Points, p.* 15). What were Vermilye & Co? Did they fill up the face of the notes after they were due? (*Record, p.* 98; *Points, p.* 14.)

If Vermilye & Co. had an "option," did not the shippers? If Vermilye & Co. had an "option" and so were not "strangers," why were the shippers "strangers" whose rights are to be disregarded?

"This was not the option of the government, but the option of the holder." (*Points, p 18 line 5 from the bottom.*)

So we said in the Court of Appeals, and we also asserted that the shippers were the "holders," and so that Court said. It is not convenient for Vermilye & Co. to admit that the shippers had

the same "holders'" right as they now claim for themselves. Why? Because it would defeat their title to note No. 143,625.

"The holder was not obliged to exercise his option at the very moment the note matured. *The contract* had not matured, because the holder had not exercised his option. The right of the holder to demand and receive bonds was secured by the Act of Congress." (*Points p. 28, line 4 from the bottom, and p. 29, line 5 from the bottom.*) Are this "contract to convert into bonds" and this "right under the Act of Congress" negotiable by the law merchant; and, if so, when did they become negotiable—in 1865, when the notes were dated, or in 1868, when they became due and were retired? It is not easy to reconcile the assertion that the notes "*were* negotiable", with the assertion that they imported a contract of more than three years' standing, and that not to pay money, but to exchange evidences of indebtedness.

Point V.

"It is proved that 7-30 notes did not lose their marketable or merchantable character when the period prescribed for conversion or redemption arrived"—(this relinquishes the payment in money)—"but that they continue to be bought and sold in the market after that time." (*Points, p. 26.*)

"In 7 Wall., 735, the Court, using this language [said]: 'The known usage of the United States to pay all bonds as soon as the right of payment accrues * * * requires the application of the rule respecting over-due obligations to bonds of the United States.'" (*Points, p. 30.*)

"On the 9th of April, 1869, Vermilye & Co. purchased the New Albany note (No. 143,625, for $1,000), and the four $1,000 Clarksville notes, paying therefor a sum calculated at the rate of 99⅓ per cent. on the principal; and on the 12th of April, 1869, Vermilye & Co. purchased the other notes, paying a like price" (*Points, p.* 7). Why, if these notes were not over-due, did Vermilye & Co. deduct one-half of one per cent. when there was "the known usage of the United States to pay all bonds as soon as the right of payment accrues." For what was the half per cent. taken, except as a guarantee against loss, and how, in view of this "known usage," could there be a loss save through a defective title?

Point VI.

"If he omits to do so, he must take it on the credit of the endorser, and must stand in the situation of the person who was holder at the time it was due." (*Points, p.* 26.)

"I went to Suydam & Nason to get the numbers from their books" (*Record, p.* 82). "Do you know the firm of Suydam & Nason? A. Yes, sir. Members of the Stock Exchange? A. Yes, sir. Did you know the individual members of the firm? A. Yes, sir; I had known Harry Nason from a boy." (*Record, p.* 92.)

Why were not Suydam and Nason called as witnesses? Was their title defective under the rule as laid down (*Points, p.* 26), or had they indemnified Vermilye & Co., so that they had no longer any interest in the suit? An affirmative answer to either branch of the inquiry disposes of the question of good faith in the acquisition of the notes, and of this suit.

Point VII.

The decree should be affirmed.

CLARENCE A. SEWARD,
For Respondents.

United States Supreme Court.

WASHINGTON R. VERMILYE, et al,
Appellants,

vs.

THE ADAMS EXPRESS COMPANY,
Respondent.

BRIEF FOR RESPONDENT.

CLARENCE A. SEWARD,
T. P. CHAPMAN,
Of Counsel for Respondent.

NEW YORK:
Davis & Corson, Law Printers, 39 Nassau Street.

1874.

UNITED STATES

Supreme Court.

WASHINGTON R. VERMILYE, *et al.*,
Appellants,

vs.

THE ADAMS EXPRESS COMPANY,
Respondent.

Brief for Respondent.

CASE.

The First National Bank of New Albany, Indiana, was the owner of thirteen notes, known as "Seven-Thirty Treasury Notes," issued under the Act of March 3, 1865 (13 *U. S. Stat. at Large*, 468). Each of the notes was for one thousand dollars, and they were all dated July 15, 1865, and were payable three years after their date. One of such notes was the note numbered 143,625, referred to in the pleadings herein. Walter Mann, the cashier of the bank, endorsed each of these notes as follows:

"Pay to the Secretary of the Treasury for conversion. W. MANN, Cas."

Or,

"Pay to the Secretary of the Treasury for redemption. W. MANN, Cas."

and delivered the same, on the 19th of May, 1868, so endorsed, to the defendant, The Adams Express Company, for transportation to the Treasury Department at Washington, for conversion there into Five-Twenty bonds. These notes, so endorsed, were contained in a sealed package, addressed "Secretary of the Treasury, Washington, D. C." (See testimony of Walter Mann, *fols.* 34, 35; of Henry H. Combs, *fols.* 38, 39; of Clarence W. Combs, *fol.* 40; and of Charles N. Williams, *fol.* 42.)

On the receipt by The Adams Express Company, at New Albany, of the said package, it was placed in a safe, and transported in charge of its messenger, John Lyons, from New Albany to Louisville, and there delivered to William R. Shelby, the money-check clerk at Louisville (see testimony of John Lyons, *fol.* 216), by whom it was, on the morning of May 22, 1868, delivered to Alanson M. Ruter, the way-bill clerk of the said Company, at Louisville aforesaid (*fol.* 219). It was then way-billed, and delivered on the same day by Ruter to Thomas G. Harkins, the messenger of the Company, who was to accompany the safe in which such package was placed, from Louisville to Seymour, Indiana, *via* the Jeffersonville, Madison and Indianapolis Railroad (*fol.* 48.)

The First National Bank of Clarksville was likewise the owner of a large number of such Treasury notes (the list and numbers of which will be found on page 79 of the Record); and among such number were the other notes in controversy in this suit. Such notes were delivered by the said bank to the Southern Express Company, on the twenty-first day

of May, 1868, at Clarksville, in a sealed package, addressed to "B. Seaman, Cashier, Fourth National Bank, New York," for a similar purpose, to wit, for conversion (*fols.* 60, *et seq.*)

The receipt by The Southern Express Company of the said package is proved by the testimony of the witness, Robert M. Prouty, its agent (*fol.* 66. *See also the bill of lading*, Record, *p.* 24.) Such package was delivered by Prouty on the evening of May 21st, 1868, to A. P. Merriwether, the express messenger of The Adams Express Company, the connecting line with The Southern Express Company, and by him carried in an iron safe to Bowling Green, Ky., where he delivered it to A. F. Talbott, the messenger of The Adams Express Company, for further transportation to Louisville (*fols.* 83 *to* 86). A. F. Talbott received the package from Merriwether, and transported it in the same safe to Louisville, where, on the morning of May 22, 1868, he delivered it to W. R. Shelby, the money check clerk of The Adams Express Company (*fol.* 88). The package was then turned over by the witness Shelby, at Louisville, to A. M. Ruter, the money waybill clerk at Louisville, on the same day, to wit, May 22, 1868 (*fol.* 90, *et seq.*), who, in his turn, delivered it to the messenger Harkins. The latter, on the evening of that day, started with such package in the same pouch and safe in which the notes received from the New Albany Bank were, on his way from Louisville, Kentucky, to Seymour, Indiana, *via* the railroad above referred to (*fol.* 100).

About thirty miles north of Jeffersonville, near Marshfield, Indiana, the train was waylaid by rob-

bers—the express messenger, Harkins, nearly killed and thrown out of the car—and the safe taken, opened, and robbed of its contents, including all the notes in question. The particulars of the robbery, &c., which occurred in the night between May 22d and May 23d, 1868, are narrated by the witness Harkins (*fol.* 101), and by the witnesses S. A. Jones, S. H. Huffman, and A. Wheden (*Record, pp.* 56 *to* 61.)

As soon as The Adams Express Company were advised of the robbery, and obtained the particulars thereof, and the numbers of the notes, they filed a caveat at the Treasury Department at Washington against the conversion of the stolen notes. (See the testimony of C. P. Benedict, *fol.* 126; John Irwin, *fol.* 129, *et seq.;* John P. Bigelow, *fol.* 131, *et seq.*) There are attached to each of these depositions exemplified copies by the Treasury Department of these notices, giving full particulars of the numbers, &c., as the same were served on the Department by The Adams Express Company. On the 12th of June, 1868, The Adams Express Company paid to the First National Bank of Clarksville the entire value of the stolen notes which belonged to it. (See Receipt, *fol.* 51, *et seq.;* testimony of William P. Hume, *fol.* 60, *et seq.*) On the 1st day of July, 1868, the Express Company paid to the First National Bank at New Albany the full value of the stolen notes belonging to it (*fol.* 148).

On the 29th day of May, 1868, and for some days subsequent thereto, The Adams Express Company advertised in the principal daily papers of the City of New York the fact of such robbery, and the num-

bers of the notes so stolen, and advised the public that "the Company claims the right to recover their possession whenever and wherever it can find the same." (See testimony of witness Barnum, *fols.* 147 and 148, and copy of advertisement, *fol.* 153, *et seq.*)

On the 29th day of May, 1868, and on the 5th day of June, 1868, The Adams Express Company served on the appellants, Vermilye & Co., two notices of such robbery, giving the number, date, and amount of each stolen note. Each of such notices contained, besides the foregoing particulars, the following: "All persons, firms and corporations are hereby cautioned against receiving or negotiating the above described notes or coupons, as the same were stolen. This Company claims the right to recover their possession whenever and wherever they can find the same." (See testimony of McKittrick, *fol.* 146, and copies of the notices referred to, *fols.* 149 *to* 152.)

On the 9th and 12th days of April, 1869, the notes in question, from which the endorsement hereinbefore referred to had been erased or obliterated, without the assent or knowledge of the said Banks, or of the said Express Company, were purchased by the appellants, Vermilye & Co., over their counter, in their banking house, in the City of New York (*fol.* 160). At the time of such purchase, the defendants knew that the notes in question were overdue. (See testimony of defendant's witness Trowbridge, the member of the appellants' firm who purchased the notes, *fol.* 184; of Meeker, their clerk, *fol.* 164; and Fish, one of the firm, *fol.* 175.) Within a day or two after the purchase, the appellants sent the

notes to the Treasury Department for conversion. The Treasury Department retained them, and declined to redeem them on the ground of the caveat filed by The Adams Express Company, and for the reason that the appearance of the notes warranted the belief that something had been extracted from them; of all of which the appellants, Vermilye & Co., were duly notified by the Department. (See testimony of witness Bigelow, *fol.* 132, *et seq.*, and exemplified copies of the letters written by the Treasury Department to Vermilye & Co., *fol.* 138.)

The United States filed their bill of interpleader in this case in the Circuit Court of the United States for the Southern District of New York, against the appellants, Vermilye & Co., and The Adams Express Company; and the usual interlocutory decree in such cases was entered on the 19th day of July, 1870, in favor of the United States. The defendants in such bill severally answered the same; and the cause having been brought on for final hearing upon pleadings and proofs, a final decree was made on the 3d day of February, 1873, in favor of the defendant, The Adams Express Company (*fol.* 229, *et seq.*): from which decree Vermilye & Co. have appealed to this Court.

The suit is by the United States to have the question of "the right to the said notes and to the money secured thereby" judicially determined. The question is, therefore, one of title to the notes; and as that is determined, so will follow the delivery of the bonds or the payment of the money.

Point I.

NO LACHES IS IMPUTABLE EITHER TO THE OWNERS OF THE NOTES OR TO THE EXPRESS COMPANY.

1. Express companies are universally recognized as safe and reliable instrumentalities of commerce.

2. This particular express company is notoriously the sole agent of the Treasury Department for the transmission of securities, bullion, and National Bank currency.

3. Spoliation of the carrier by overwhelming force and arms, feloniously used, excludes the inference of negligence.

Point II.

NO LEGAL TITLE TO PROPERTY THUS ACQUIRED CAN BE CONFERRED BY THE CAPTOR.

1. This is a rule of elementary law. "No one can transfer to another a better title than he has himself." (*Saltus* v. *Everett*, 20 *Wend.*, 275.)

"*Caveat emptor, qui ignorare non debuit quod jus alienum emit.*" "The second vendee of a

chattel cannot stand in a better situation than his vendor." (*Dixon* v. *Yates*, 5 *B. & Ad.*, 313.)

2. The rule is of universal application, save with the solitary exception of negotiable instruments transferred before maturity.

Point III.

THE INSTRUMENTS IN QUESTION WERE NOT NEGOTIABLE NOTES, NOR WERE THEY INTENDED SO TO BE BY THE UNITED STATES GOVERNMENT; NOR ARE THE COMMON LAW RULES APPLICABLE TO COMMERCIAL PAPER APPLICABLE THERETO.

1. The antecedent legislation establishes the fact that, when Congress intended to make government securities transferable, such intention was plainly expressed, and in language which excluded the idea of negotiability as contradistinguished from assignability. "The said Treasury notes shall be transferable by delivery and assignment endorsed thereon by the person to whose order the same shall on the face thereof have been made payable." (*Act of June* 30, 1812, 2 *U. S. Stats. at Large*, 766; *Act of February* 25, 1813, *id.*, 801; *Act of March* 4, 1814, 3 *id.*, 160; *Act of December* 26, 1814, *id.*, 161; *Act of October* 12, 1837, 5 *id.*, 202; *Act of June* 28, 1847, 9 *id.*, 118.)

2. When it was intended that the notes should be negotiable in the sense of the Law Merchant, Congress said so plainly and frankly. "United States notes payable to bearer," and they shall "be lawful money and a legal tender." (*Act of February* 25, 1862, 12 *U. S. Stat. at Large*, 345.)

3. The Act of March 3, 1865, under which Act the notes in suit were issued, is conspicuous by its silence upon the question of their negotiability. It authorizes the Secretary of the Treasury to issue "Treasury notes convertible into any bonds authorized by this Act, and may be of such denominations not less than $50, and bearing such dates, and be made redeemable or payable at such period as, in the option of the Secretary of the Treasury, may be deemed expedient, and the interest may be made payable semi-annually or annually, or at the maturity thereof, and the principal and interest, or both, may be made payable in coin or in other lawful money" (13 *U. S. Stat. at Large*, 468). There is nothing in this language which indicates that the notes thus authorized should be "lawful money and a legal tender," or that they should be transferable in any different manner from pre-existing notes, or that they were to be negotiable under the Law Merchant. The intent of Congress is equally as well effected, and the rights of just owners equally as well protected, by considering the notes as choses in action, as by considering them negotiable instruments within the Law Merchant.

The notes in question are made payable to the order of ————. When this blank was filled it required the endorsement of the payee to give currency to the notes. Had the Government for any reason been unable to meet the notes at their maturity, it cannot be a question that the holder could not have recovered against the payee as indorser. The Law Merchant has not as yet recognized any indorser of government securities. There were $600,000,000 of these notes, and it is not to be assumed that the law would have said that those who loaned this amount to the Government were to be held responsible, as indorsers, for its repayment. In such a suit, it would have been urged, and undoubtedly decided, that the notes in question were not so within the Law Merchant as to render the payee liable as endorser. Such a decision would have commended itself as just, for the whole scope of the Act is to pledge the credit of the United States, and that alone. No intent is expressed, and certainly none would have been implied, to mortgage the credit of the individual payees, and to enforce it against them in their character as endorsers. If they could not have been held liable as endorsers, it would have been because the notes were not within the Law Merchant. (*Morrow* v. *Vernon*, 35 *N. J. L.*, 490; *State* v. *Dubuclet*, 23 *La. Ann.*, 267.)

4. The Act of March 3, 1865, by adopting previous Acts, required these notes to be sealed (*Act of February* 25, 1862—12 *U. S. Stat. at Large*, 345; *Act of June* 30, 1864—13 *id.*, 218;

Act of May 31, 1854, § 2—10 *id.*, 297); and so, in fact, they were (*fol.* 200). "At common law, bills of exchange and promissory notes, being simple compacts, cannot be under seal, at least so far as to retain their negotiable qualities" (*Byles on Bills, p.* 67, *n.*, 10 *Ed.; Edwards on Bills, p.* 208; *Story on Bills,* § 61; *Clark* v. *Farmers' Loan Co.*, 15 *Wend.*, 256; *Steele* v. *Oswego Co., id.*, 265; *Conine* v. *Junction R. R. Co.*, 3 *Houst.* (*Del.*), 288). "An instrument under seal, though in all other respects like a promissory note, is, according to the best authorities, not negotiable, and possesses none of the qualities of negotiable paper" (*Parsons on Bills, p.* 26). Promissory notes, which were made negotiable by the Statute of *Anne*, were not under seal (*Clark* v. *Farmers' Loan Co., supra*). The statute under which the notes in question were issued cannot be regarded as enlarging the provisions of the Statute of *Anne*, for the very reason that it fails to make the notes which it authorizes negotiable. The United States Government is to be regarded either as an individual (*Bank of U. S.* v. *United States*, 2 *How.*, 711; *Swain* v. *United States, Dev. C. C.*, 53; *Curtis* v. *United States*, 2 *N. & H.*, 144), or as a corporation (*Stearns* v. *United States*, 2 *Paine*, 301). "The United States are a body corporate, having a capacity to contract, * * * and in this respect stand upon the same footing with other corporate bodies." "We have before had occasion to remark that the legal effect of the use of a seal by a corporation does not differ from that of an individual" (*per* NELSON, *J.*, *in Steele* v. *Oswego*

Co., supra). If this is the law, its application ought not to be refused on account of the dignity of the corporation whose seal has been used, or on account of the frequency of its use, for it has long been the pride of the law that it was "no respecter of persons."

5. Each of the notes bore this endorsement: "At maturity, convertible at the option of the holder into bonds, redeemable at the pleasure of the government at any time after five years, and payable twenty years from July 15, 1868, with interest at six per cent. per annum, payable semi-annually in coin" (*fol.* 200). This endorsement is the same in legal effect as if it had been printed in the body of the note (*Noonan* v. *Bradley*, 9 *Wall.*, 394; *Overton* v. *Tyler*, 3 *Penn. R.*, 346; *Benedict* v. *Cowden*, 49 *N. Y. Rep.*, 396; *Burgh* v. *Preston*, 8 *Term*, 483); and it destroyed the negotiability of the notes (*Crouch* v. *Credit Foncier of England*, *Eng. Law Rep.*, 8 *Q. B.*, 386). This right of conversion was sanctioned by the statute, and the government was bound by the endorsement to permit it, because it thereby agreed to permit it. Such an agreement is unknown to the Law Merchant.

Point IV.

THE NOTES HAVING BEEN ACQUIRED BY THE APPELLANTS AFTER MATURITY, THEIR TITLE CANNOT AVAIL AS AGAINST THE BANKS, OR AS AGAINST THE EXPRESS COMPANY, THEIR EQUITABLE ASSIGNEES.

1. The larceny of the notes having been established, the burden of proof was upon the appellants to show the acquisition of the notes, in good faith, without notice and before maturity No presumption exists in favor of a lawful title when the felonious caption has been proved (*Morton* v. *Rogers*, 14 *Wend.*, 575, 581; *Farmers, &c., Bank* v. *Noxon*, 45 *N. Y. Rep.*, 765; *Smith* v. *Sac. Co.*, 11 *Wall.*, 139; *Sloan* v. *Union Co.*, 67 *Pa. St.*, 470). The appellants did not show this, but did show that they purchased the notes on the 9th and 12th of April, 1869, about nine months after their maturity, and at one-half of one per cent. discount.

The evidence also showed that on the 29th of May and the 5th of June, 1868, the Express Company delivered printed notices to persons in charge of the appellants' business, and then behind their counters, cautioning them, under the name of "all persons, firms and corporations, against receiving or negotiating" the notes. This notice made the subsequent purchase of the notes by the appellants *mala fide.*

"Wilful abstinence from enquiry where the circumstances are such as to show that the purchaser abstains from the enquiry lest it should disclose a vice in the bill, is evidence of bad faith. The buyer sees to it that he is innocently ignorant of every fact which will weaken his title. There is simply a strife to see which shall get the greatest share of the plunder; then the vendor disappears, never more to be seen or heard of" (*Boyce* v. *Geyer*, 2 *Mich., N. P.*, 74). "If a negotiable promissory note, before its maturity, is sold and delivered by the payee to a purchaser in good faith, and for value, but is not endorsed by the payee until after it becomes due, or until after the purchaser has notice of defence, the notes in the purchaser's hands will be open to any defence that might have been set up against the payee" (*Clark* v. *Whittaker*, 50 *N. H. R.*, 474). Such an endorsement does not relate back to the time of the taking, and the endorsee has no better title than the endorser himself had (*Lancaster Bank* v. *Taylor*, 100 *Mass.*, 18). The opinion of REYNOLDS, *C.*, in *Seybel* v. *Nat. Curr. Bank* (54 *N. Y. Rep.*, 288, 311), states the better rule upon this point.

Again, the notice given by the Express Company before the maturity of the notes enured to its benefit after their maturity, within the case of *Texas* v. *White* (7 *Wall.*, 735).

The position of the appellants is this: B having endorsed A.'s note to him, misplaced it, and goes to C. and says, "I have mislaid A.'s

note, endorsed by me in blank. Do not purchase it, but give me notice if it should be presented to you." C. disregards the notice, saying, "I have so many of such notices I cannot regard them." Thereupon he purchases the note, and claims to recover against B. as endorser. The appellants contend that B. can take advantage of his own wrong and collect the note. If such is the law, it ought not longer to remain so. A refusal to regard a notice actually delivered ought not to afford the wrongdoer a muniment of title. To permit it to do so would be to give judicial sanction to culpable negligence. In *Murray* v. *Lardner* (2 *Wall.*, 110) the Court said: "Wilful ignorance and guilty knowledge alike involve the result of bad faith. They are the same in effect."

6. The notes were purchased eight months after they became due and payable, or convertible, and their purchase was, therefore, *mala fide*. "A failure to endorse a note ought to put the purchaser on his guard *as much as a failure to collect it at maturity*." (*Clark* v. *Whittaker*, 50 *N. H. Rep.*, 475.) "Where the defect in title appears on the face of the lost or stolen instrument at the time of the transfer, as where it is transferred after it is due or after dishonor, the party obviously has constructive notice of his assignor's infirmity, and can have no better title than he. It is an obvious case of transfer with notice, and follows the ordinary rule of paper over-due or otherwise defective." (2 *Pars. on Bills*, 279.)

7. The Express Company having shown the property in the notes to have been in the banks, and by assignment in itself, "it was incumbent on the defendants, who had taken them after they were due, to show that the party from whom they took them had a good title to them" (*Down* v. *Halling*, 4 *B. & C.*, 330). This the appellants did not do. They knew their vendors. They were in the City of New York (*fol.* 181), and could have been called as witnesses. They were not called, though the burden was upon the appellants to sustain their title. That they were not called as witnesses justifies the presumption that their title was indefensible; and their title was that of the appellants.

This is the rule of this Court: "A person who takes a bill which upon the face of it was dishonored, cannot be allowed to claim the privileges of a *bona fide* holder without notice. If he chooses to receive it under such circumstances, he takes it with all the infirmities belonging to it, and is in no better condition than the person from whom he received it." (*Andrews* v. *Pond*, 13 *Pet.*, 65, 79; *Goodman* v. *Simons*, 20 *How.*, 343.)

"Purchasers of notes or bonds past due, take nothing but the actual right or title of their vendors." (*Texas* v. *White*, 7 *Wall.*, 735; *Texas* v. *Hardenberg*, 10 *Wall.*, 68, 90.)

8. The question here is not one of equities be-

tween endorsee and maker at maturity, for the reason that there was no payee or endorser in fact; and the appellants, therefore, cannot claim as endorsees any protection accorded to that position by the Law Merchant (*Andrew* v. *McCoy*, 8 *Ala.*, 920; *Hedges* v. *Seeley*, 9 *Barb., S. C. R.*, 214; *Nelson* v. *Nelson*, 6 *Ind. Eq.*, 409; *Dann* v. *Norris*, 24 *Conn.*, 333; *Clark* v. *Sigourney*, 17 *Conn.*, 511); nor does the maker interpose any equities. The question is one of title to a chattel—shall that of the thief or of the true owner prevail?

Point V.

WHEN MR. MANN ENDORSED UPON THE NOTE NO. 143,625 THE WORDS, "PAY TO THE SECRETARY OF THE TREASURY FOR REDEMPTION," A NEW CONTRACT WAS ENTERED INTO BETWEEN THE UNITED STATES AND THE BANK, THEN THE HOLDER AND OWNER OF THE NOTE, WHICH CONTRACT WAS NOT WITHIN THE LAW MERCHANT, AND COULD NOT BE ABROGATED BY ANY SPOLIATION BY A THIRD PARTY.

If, before this endorsement, the instrument in question had been a negotiable promissory note, its negotiability was absolutely destroyed

by the exercise by the holder of the right given to him by the Statute, and the note itself, of converting it into bonds. The contract to pay in money was terminated by the exercise by the holder of the option to take the bonds, and his agreement manifested by his endorsement to take such bonds. (*Dinsmore* v. *Duncan*, *N. Y. Commission of Appeals*, *Sept.* 1874, *Opinion hereto annexed.*) The option to convert into bonds, exercised and evidenced on the note by the then holder, constituted a new contract, which estopped the holder from demanding payment of the note in money, and this was a new, substantive and independent contract, which was not negotiable because it was not for the payment of money.

To illustrate this: Suppose that the note in question had been issued by an individual, and upon the back of it Mr. Mann had written, "It is agreed that this note shall be paid by the delivery to me of a five-twenty United States bond," and filed it away in his safe, as he did, and the note had thence been feloniously abstracted, and the endorsement obliterated—could the obliteration of the endorsement revive the obligation, so as to require the maker to pay the note in money? (*Baker* v. *Wheaton*, 5 *Mass.*, 512.) The note as a note was then *functus officio*, and "such a note cannot be negotiated" (*Id.*) The rule that when there are two innocent parties, he whose negligence has caused the loss must bear it, has no application. In the supposed case the maker had a right to make the

agreement. The owner of the note had a right to assent to it. Can it be said that a thief who has stolen the note can revive its money obligation by obliterating the endorsement and putting it in circulation, and so make the maker responsible for the payment in money?

The cases of lost notes and of notes feloniously taken, all assume the existence of the note as such. But in the supposed case, the note, as a note, has been destroyed by a new agreement, and the endorsement of the fact; and it is apprehended that no case can be found which gives to a thief the right to obliterate the new agreement and restore to the note its obligation of an original promise.

But to illustrate still further: Suppose the note in question had come to the hands of the defendants with the endorsement upon it; would not such endorsement have shown to the defendants immediately that the note was no longer payable in money, but was simply an evidence of indebtedness against the United States, to be redeemed in bonds? If such was the effect of the endorsement, how can its obliteration restore a promise to pay in money?

The endorsement by Mr. Mann: "Pay to the Secretary of the Treasury for *conversion*," coupled with the printed endorsement of the Government, became essential parts of the note, modifying its obligation, and destroying the right to demand its payment in money.

The obliteration of such endorsement was tantamount to its severance from the note without the consent of the maker or owner, and was a material alteration and spoliation of it, sufficient to destroy the note even in the hands of an innocent endorsee for value. (*Benedict* v. *Cowden, supra; Waite* v. *Pomeroy*, 20 *Mich.*, 425; *Dinsmore* v. *Duncan, supra.*) This new contract was made between the Government and the legal holder of the note, and therefore the date when it was made is immaterial; for having been made by and between the original maker of the note and the holder, it is to be construed in precisely the same way as if it had been made at the date of the note. Permission was given, so far as the Government was concerned, to make it as of the date of the note, and therefore its assent is of that date.

The effect of Mr. Mann's endorsement was:

1st. To terminate the alternative mode of payment prescribed in the note itself, and to change it into a contract to deliver bonds. The contract to pay in money then became *functus officio.*

2d. It relinquished the right of the bank to demand payment in money, and substituted its contract to accept other evidence of indebtedness.

3d. It transferred to the United States the property in the note by making it the payee

thereof, and reposed simply upon the statute and faith of the Government for the issuance and delivery of the bonds. (*United States* v. *Barker*, 1 *Paine, C. C. R.*, 156; *Dugan* v. *United States*, 3 *Wheaton*, 172.)

4th. It terminated the contract to pay in money, and therefore demonetized the instrument, and converted it into a simple bid or subscription to another and further government loan (*Rex* v. *Reeves*, 2 *Leach C. C. R.*, 808, 816).

5th. By the endorsement the instrument was utterly destroyed as a negotiable instrument, and no one, without the assent of both Mr. Mann and the Government, could restore its negotiability (*Ledwick* v. *McKim*, 53 *N. Y. Rep.*, 307).

6th. The erasure of Mr. Mann's endorsement by the thief must be deemed to be a mere act of spoliation, having no effect upon the instrument (1 *Greenl. on Evidence*, § 566). It certainly could not restore an instrument to negotiability where that element had been lost. The true view is that it left the instrument precisely as it was; that the act of the wrong-doer was a pure spoliation, leaving the previous rights of the parties wholly unaffected.

Point VI.

The decree appealed from should be affirmed.

CLARENCE A. SEWARD,
T. P. CHAPMAN,
Of Counsel for Respondent.

October, 1874.

New York Commission of Appeals.

WILLIAM B. DINSMORE, President of the Adams Express Company,
Appellant.

against

WILLIAM B. DUNCAN, *et al.*,
Respondents.

DWIGHT, *C.:*

This action is brought for the conversion of a United States Treasury Note, of the amount of $1,000, payable three years after date, to the order of ——— with interest at $7\frac{3}{10}$ per cent., payable semi-annually in lawful money. There was on the face of the note a statement that "the Government reserves the right of paying in coin the interest on this note, at the rate of six per cent. *per annum.* There was an endorsement to the effect that the note, "at maturity," was "convertible, at the option of the holder, into bonds redeemable at the pleasure of the Government at any time after five years, and payable twenty years from July 15, 1868, with interest at six per centum payable

the right to fill in his name in the blank space, and thus make the note payable to himself. (*Crutchely* v. *Clarance*, 2 *M. & S.*, 90; 19 *C. B.* (*N. S.*), 310; 3 *Sneed*, 558.) Until that is done, it will circulate as though payable to bearer. (1 *Pars. on Notes and Bills*, 33; 2 *Id.*, 448; *Crutchely* v. *Mann*, 5 *Taunt.*, 529; *Greenhow* v. *Boyle*, 7 *Blackf.*, 56; *Atwood* v. *Griffin*, *Ryan & M.*, 425.)

Again. It is objected that the note is in the alternative; and that accordingly it does not fall within the definition of a negotiable instrument. To this effect are cited *Atkinson* v. *Manks*, 1 *Cowen*, 707; *Cooke* v. *Satterlee*, 6 *Id.*, 108; *Matthews* v. *Houghton*, 2 *Fairfield*, 377; *Story on Bills*, *Sec.* 143. But in these cases the alternative was with the *debtor;* so that it could not be said that the instrument was payable absolutely and at all events. No case was cited, nor is it believed any can be found, in which, where the note is payable absolutely, as far as the debtor is concerned, and the creditor has an option to convert the obligation of the debtor into another and different one, it is held to be not negotiable so long as the creditor has not exercised his option. The only point on which any doubt would seem to arise would be, whether the reservation on the part of the debtor of the right to pay the interest in coin instead of lawful money, would destroy negotiability. This reservation plainly does not affect the principal. That is payable absolutely. Nor does it affect the payment of the interest in money; both kinds of currency, coin and paper, being equally lawful. The only question is, whether an *alternative* right on the debtor's part to

pay interest in coin or paper destroys negotiability. The agreement to pay interest is a mere incident or accessory to the debt itself. (*Florence* v. *Drayson*, 1 *C. B.* (*N. S.*), 584; *Florence* v. *Jenings*, 2 *Id.*, 454; 2 *Parsons on Bills*, 397, *note* v. *and cases cited.*) It is a maxim of the law that an accessory does not draw with it the principal, but rather follows the nature of the latter. (*Accessorium non ducet sed sequitur suum principale. Broom's Legal Maxims*, 203; *Co. Litt.*, 157 *a*, 157 *b.*) Under these rules it would seem that the option to pay another rate of interest could not affect the negotiability of the note itself, since, independent of the clauses concerning interest, it has every element necessary to make it negotiable. The result of the discussion is, that until the creditor has exercised the option of demanding bonds conferred on him by the statute, in accordance with the contract, the note was negotiable paper; and, if it had been stolen prior to that time, and had been passed to a purchaser for value, he could have held it as against the lawful owner.

It is now necessary to consider the effect of the endorsement made by Mr. Mann, the cashier, on the note, for the purpose of conversion into United States bonds. This will be discussed, in the outset, as though the endorsement was there when the bonds were negotiated to Benas & Sons. The obliteration of the endorsement will be subsequently considered.

It cannot be successfully disputed that the printed statement on the back of the note, to the effect that it was convertible into bonds at the option of the holder,

formed a part of it; and that the whole contract between the United States and the holder was to be derived from taking into consideration the statements and representations both on the face and the back of the note. The holder certainly could have urged this in an application to the Government to give him bonds for his notes (*Overton* v. *Tyler*, 3 *Penn. St.*, 346). It is there said that a "memorandum endorsed on a note payable to bearer is incorporated with it. *Benedict* v. *Cowden* (49 *N. Y.*, 396) holds that a memorandum upon a note made contemporaneously with, and delivered with it, and intended as a part of the contract, is a substantive part of the note, and qualifies it the same as if inserted in the body of the instrument, and with it constitutes a single contract. It cannot be material where the memorandum is found—whether on the front or on the back of the instrument. This must be particularly the case where the instrument is issued under a general statute, and where similar notes are largely in circulation, and familiar to all men engaged in the purchase of commercial paper. No one can complain that the rule is rigorously applied, as no injustice can be experienced from it.

When Mr. Mann endorsed on the note the words—"Pay to the Secretary of the Treasury for conversion or redemption," thus exercising the option given him by the contract, the case fell under the rules applied to cases of election. It is a well settled legal principle that an election may be given in a contract either to an obligor or an obligee. The case of *Neele* v. *Reeve* (2

Siderfin, 107), is a good early illustration. "A. covenanted with B. that A., or his son C., or either of them, shall work with B. at the grinding and polishing of glass. It was held that B. had the election to require either once of them to do the stipulated work. An election made is conclusive and irrevocable. (*Brown* v. *Royal Ins. Co.*, 1 *Ellis & Ellis*, 853; *Lawrence* v. *Ocean Ins Co.*, 11 *Johns.*, 261, 264; *S. C.*, 14 *Johns.*, 55, 56.)

In the last case the Chancellor said: "If a man has an election to do and demand one of two things, and he determines his election, it shall be determined forever. * * * * If A. gives B. one of the horses in his stable, according to the instance given in Coke, B. has his election to take which he pleases, as no one in particular was designated by A., but, having elected one, all will agree that he cannot return it and take another." So in *Layton* v. *Pearce* (*Douglas*, 14) the defendant had received of G. £1 6*s*. on condition that if a certain lottery ticket should come up a blank or a prize on the next day he would deliver to G. an undrawn ticket, or pay him £20. Lord MANSFIELD, in behalf of the Court, said that they were of opinion that, if the option had been in G., and, if he had made his election to take the £20, he would have put an end to the alternative, and have converted the agreement into an absolute contract for the payment of money. It is equally plain that if he had elected to take the undrawn ticket, there would have been, after such election, no right to demand the money. That would make the case very near to that at bar in electing to take the bonds. There is nothing to prevent the

holder from electing to take bonds at any time, though the notes cannot be actually converted into bonds until maturity. Until an election is exercised they remain Treasury notes. When that occurs, their function is at an end, and the holder has only a claim against the United States for the proper amount of bonds. This is a *chose in action*, and not negotiable.

I think that the holder in the present case exercised its election when, after having made the endorsement, it placed the bonds in the possession of the Express Company for transmission to the United States Treasury. It has never withdrawn its act, if it has the power to do so. The defendants in the present case having no privity with the parties to the transaction, cannot maintain that it was inchoate or imperfect, or that its effect was different from its apparent intent. Accordingly, if Mr. Mann's endorsement had been on the note when Benas & Son received it, they would have taken it, not as negotiable paper, but as an instrument bearing evidence of an election to take bonds.

The fallacy of the defendant's argument consists in the fact that it regards the endorsement of Mr. Mann as an ordinary commercial endorsement. On that view, a holder whose name was not inserted in the body of the note might, perhaps, be denied the power of making a restrictive endorsement. That is not the case. The endorsement was for *conversion*. Its object was not to enforce or transfer the instrument, but to extinguish it; to destroy its life. When it issued from the hands of the bank it was inert, and formed

no more a part of the commercial paper of the country. Had it reached the Treasury in the due course of business, it would have been a mere claim for bonds. By the terms of the note itself the *holder* had the option to convert it into bonds. The word "holder" must be construed to mean any one who had lawful title, and cannot be confined to a person who was written in the face as payee. It is only as "holder" that a person has a right to fill in the name of a payee; and of course he may in the same character do the act which the statute prescribes, and elect to take bonds instead of money.

The final point is, whether the erasure of Mr. Mann's endorsement by the thief is material?

His act must be deemed to be a mere act of spoliation, having no effect upon the instrument. (1 *Greenl. on Evidence*, § 566.) It certainly could not restore an instrument to negotiability, where that element had been lost. The true view is that it leaves the instrument precisely as it was. The law will still read the words, "Pay to the Secretary of the Treasury for conversion" on the note, as being potentially present. If the erasure had any effect, it would be to destroy the note as a negotiable instrument, as detaching a memorandum forming a part of it, under the rule in *Benedict* vs. *Cowden* (*supra*). This view would be adverse to the position of the defendants. The correct rule, however, is, that the act of the wrong-doer is a pure spoliation, leaving the previous rights of the parties wholly unaffected. The thief did not, as in the case of stolen notes payable to bearer, or endorsed in blank, have even the nominal

[illegible] no pretence of any legal ground [illegible] act could destroy the plaintiff's right, any more than if he had mutilated the instrument or wholly destroyed it.

The judgment of the Court below should be reversed.

All concur. Judgment reversed, and judgment ordered for plaintiff upon verdict, with costs.

BLATCHFORD, SEWARD, GRISWOLD & DA COSTA,
For Plaintiff.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,
For Defendants.